

# CONTINUING EDUCATION FOR DIRECTORS OF PUBLIC COMPANIES

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## ABSTRACT

*Directors of public companies are responsible for overseeing complex organizations in a rapidly changing business environment, but they are not required to engage in continuing education. This creates a danger that directors will not have the knowledge they need to meet the significant demands of overseeing public companies. To address this, public companies should adopt mandatory continuing education policies for their boards, and the Securities and Exchange Commission should require public companies to disclose basic information about their continuing education programs in their proxy statements.*

*This is the first scholarly article to address the issue of mandatory continuing education for directors of public companies. Public company boards have always needed continuing education. In this Article, I demonstrate that the need for continuing education is especially critical today. The responsibilities of the public company board have expanded dramatically over the last ten years. At the same time, the composition of public company boards has transformed, with less experienced individuals more likely to join public company boards than in the past. One would have expected public companies to respond to these two trends by adopting mandatory continuing education policies for their boards. However, they have not.*

*I surveyed the organizational documents and proxy statements of sixty public companies, and I discovered that 93% of the surveyed companies do not require ongoing education for their directors; most public companies merely "encourage" directors to do so. In addition, many public companies currently claim to provide continuing education to directors on a voluntary basis, but they do not provide the necessary information to determine whether the programs are effective.*

*Therefore, I recommend that the SEC promulgate rules requiring public companies to disclose (1) whether they have adopted a mandatory continuing education policy for their directors, and, if not, why not; and (2) basic information about their continuing education programs, including the content of the program, the amount of education provided to directors, and the identities of directors who participated in continuing education during the previous year. If adopted, these proposed*

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*rules will encourage public companies to provide effective continuing education to their boards, ensuring that directors will have the knowledge needed to meet their oversight responsibilities.*

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## INTRODUCTION

Tattoo artists are required to engage in continuing education to keep their knowledge and skills up to date.<sup>1</sup> So are massage therapists, cosmetologists, funeral directors, teachers, social workers, many financial services professionals, most health care professionals,

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1. See *infra* note 39.

engineers, accountants, and lawyers.<sup>2</sup> Yet directors of public companies are not required to engage in continuing education.<sup>3</sup> This means, for example, that the individuals responsible for overseeing a complex multinational corporation employing hundreds of thousands of workers with a market capitalization in the trillions of dollars are not required by law to keep their knowledge current to face new and serious challenges to their companies, such as the impact of web3.<sup>4</sup> Moreover, while public companies can voluntarily adopt mandatory continuing education policies for their directors, most have not.<sup>5</sup> To ensure that directors have the knowledge necessary to meet the significant demands of overseeing public companies, this has to change.

This is the first scholarly article to address mandatory continuing education for directors of public companies.<sup>6</sup> In this Article, I argue that public companies should adopt mandatory continuing education policies for their boards. Business environments rapidly change, which is why public company boards have always needed continuing education. But the need for continuing education is especially acute today. The responsibilities of the public company board have grown tremendously over the last ten years. At the same time, the composition of public company boards has transformed, with less experienced individuals more likely to join public company boards than in the past. This one-two punch presents a serious challenge to the collective knowledge of the board of directors. Continuing education is needed to fill the knowledge gap. I further recommend that the Securities and Exchange Commission should promulgate rules requiring public companies to disclose whether they have adopted a mandatory continuing education policy, as well as basic information about their continuing education programs. These new disclosure rules will encourage public companies to adopt robust continuing education programs for their directors.

Part I explains why public companies need a knowledgeable board. I begin by stating the obvious: knowledge is necessary for directors to effectively perform their duties. I also show that behaving knowledgeably is an essential part of a director's fiduciary duties. I then review

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2. See *infra* note 39.

3. See *infra* Section III.C.

4. Web3 is "the name some technologists have given to the idea of a new kind of internet service that is built using decentralized blockchains—the shared ledger systems used by cryptocurrencies like Bitcoin and Ether." Kevin Roose, *The Latecomer's Guide to Crypto*, N.Y. TIMES (Mar. 18, 2022), <https://www.nytimes.com/interactive/2022/03/18/technology/web3-definition-internet.html> [<https://perma.cc/WCD7-3YE9>].

5. See *infra* Section IV.A.

6. The only other scholarly article I was able to find included a single paragraph on director education as one of a series of recommendations to improve corporate governance. See Douglas M. Branson, *Enron—When All Systems Fail: Creative Destruction or Roadmap to Corporate Governance Reform?*, 48 VILL. L. REV. 989, 1015 (2003).

the treatment of director knowledge under the federal securities laws and stock exchange listing rules, before describing the role of knowledge in the director nomination process.

Part II explains the relationship between education and knowledge. It also introduces and defines continuing education, discussing the purpose of continuing education and explaining the pros and cons of mandatory continuing education.

In Part III, I explore continuing education for directors of public companies. I demonstrate that while continuing education for directors is a good corporate governance practice, neither state law, nor federal law, nor the stock exchanges require directors to participate in continuing education. Instead, it is left to each board to decide whether its directors should engage in continuing education and, if so, what kind of continuing education directors should receive.

In Part IV, I analyze the director continuing education practices of sixty public companies. After reviewing the corporate governance documents and proxy statements of these companies, I discovered that 93% of them did not require their boards to participate in continuing education. Instead, most companies merely “encouraged” their directors to engage in ongoing education. Moreover, the survey revealed that most companies disclosed very little information about their continuing education programs, including whether their directors participated in a program. Therefore, it is not possible to determine what, if any, continuing education the board actually received.

In Part V, I demonstrate that while continuing education for directors has always been important, it is particularly important now. There are two specific reasons. First, the responsibilities of the public company board have expanded over the last ten years, meaning that today’s directors need more knowledge, as well as different types of knowledge, to meet their responsibilities. Second, the composition of public company boards has significantly changed, with less experienced individuals more likely to join public company boards than in the past. Because they have less experience, these directors are especially in need of continuing education to meet their oversight responsibilities.

In Part VI, I recommend that all public companies should adopt mandatory continuing education for their directors. The continuing education program should be implemented and overseen by the public company’s nominating committee, which should ensure that the continuing education is tailored to the needs of the specific board and specific directors.

I also recommend that the SEC should promulgate new rules that require public companies to disclose their approaches to director continuing education. The SEC should require public companies to disclose in their proxy statements whether they have adopted a

mandatory continuing education policy for their board, and, if not, why not. In addition, the SEC should require public companies to disclose basic information about their continuing education programs, including the content of the program, the amount of education provided to directors, and the identities of directors who participated in continuing education during the previous year. Many public companies currently claim to provide continuing education to directors on a voluntary basis, but they do not provide the necessary details to determine whether the programs are useful. If adopted, these proposed rules would likely encourage public companies to provide effective continuing education to their boards, ensuring that the board will be able to meet its oversight responsibilities.

### I. WHY PUBLIC COMPANIES NEED A KNOWLEDGEABLE BOARD

It seems obvious that a public company board should be comprised of knowledgeable directors, which is why having a knowledgeable board is typically identified as a best corporate governance practice. Knowledge is also a key part of a director's fiduciary duties. Finally, the federal securities laws and stock exchange listing rules address the role of board knowledge.

#### A. *Knowledge and Best Practices*

The board of directors is responsible for overseeing the company's business.<sup>7</sup> Therefore, assembling the right group of individuals to serve on a board is a significant corporate governance issue. Experts have identified various desirable qualities for board service, including intellect, integrity, leadership skills, good judgment, and communication and interpersonal skills.<sup>8</sup> In addition, they emphasize the importance of knowledge. For example, according to the ABA's *Corporate Director's Guidebook*: "To be effective, a director must understand the corporation's business, operations, and competitive environment. This knowledge is fundamental to the director's ability to form an objective judgment about corporate and senior management performance and strategic direction, and to challenge, support, and reward management as warranted."<sup>9</sup>

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7. DEL. CODE ANN. tit. 8, § 141(a) (2022) ("The business and affairs of every corporation . . . shall be managed by or under the direction of a board of directors . . .").

8. See, e.g., BOB TRICKER, CORPORATE GOVERNANCE: PRINCIPLES, POLICIES, AND PRACTICES 319-23 (3d ed. 2015) (identifying desirable personal attributes and core competencies of a director).

9. ABA Bus. L. Section, *Corporate Director's Guidebook—Sixth Edition*, 66 BUS. LAW. 975, 987 (2011).

While there is no authoritative list of the types of knowledge directors must have, or should have, to sit on public company boards, experts often identify the following topics as key knowledge areas:

- Knowledge about the company;
- Knowledge about the company's business;
- Knowledge about the company's financial condition;
- Knowledge of strategic planning;
- Knowledge of risk management; and
- Knowledge of environmental, social, and governance (ESG), including corporate social responsibility and sustainability.<sup>10</sup>

In addition, depending on the particular company, the board will also need knowledge in other specific areas, such as marketing and brand management, supply chain management, technology, international markets, cybersecurity, mergers and acquisitions, and health and safety.<sup>11</sup>

### B. Knowledge and Fiduciary Duties

While state corporate statutes are generally silent on director qualifications, common law fiduciary duties require that directors act knowledgeably. Knowledge is an essential part of a director's fiduciary duties, including the duty of care.<sup>12</sup> The duty of care requires directors to "exercise the requisite degree of care in the process of decisionmaking and act on an *informed* basis."<sup>13</sup>

The Delaware Supreme Court emphasized the importance of board knowledge in the seminal case of *Smith v. Van Gorkom*, in which the

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10. *Id.* According to the *Corporate Director's Guidebook*, a director should understand:

[T]he corporation's business plan; the key drivers underlying the corporation's profitability and cash flow—how the corporation makes money both as a whole and also in its significant business segments; . . . ; the corporation's economic, financial, regulatory, and competitive risks, as well as risks to the corporation's physical assets, intellectual property, personnel, and reputation; the corporation's financial condition and the results of its operations and those of its significant business segments for recent periods; and the corporation's performance compared with that of its competitors.

*Id.* at 987-88; see also GLASS LEWIS, BOARD SKILLS app. 1 (2020), <https://www.glasslewis.com/wp-content/uploads/2018/03/BoardSkillsAppendixEurope.pdf> [<https://perma.cc/J4TB-E5JX>] (identifying core and desirable board skills and knowledge); TRICKER, *supra* note 8, at 322-23 (identifying key areas of knowledge).

11. DAVID LARCKER & BRIAN TAYAN, CORPORATE GOVERNANCE MATTERS 82-83 (3d ed. 2020) ("Companies also have demand for directors with special expertise that matches the functional or situational needs of the firm.")

12. Rather than using the term "knowledge," the Delaware courts often use the term "informed." See, e.g., *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984) (stating that, when making a decision, directors are required to "inform" themselves of all material information reasonably available to them), *overruled by Brehm v. Eisner*, 746 A.2d 244 (2000).

13. R. FRANKLIN BALOTTI & JESSE A. FINKELSTEIN, DELAWARE LAW OF CORPORATIONS AND BUSINESS ORGANIZATIONS § 4.15 (John Mark Zeberkiewicz & Blake Rohrbacher eds., 4th ed. Supp. 2022) (emphasis added).

shareholders argued that the board breached its duty of care by approving a merger on an uninformed basis.<sup>14</sup> The court held that the business judgment rule's presumption "that in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company"<sup>15</sup> would not protect the directors in *Van Gorkom* because they had not acted on an informed basis.<sup>16</sup> While not requiring the board to have complete or perfect knowledge about its decision, the court noted that "[t]he determination of whether a business judgment is an informed one turns on whether the directors have informed themselves 'prior to making a business decision, of all material information reasonably available to them.'"<sup>17</sup>

Knowledge is also an important part of a board's oversight responsibilities. For example, under Delaware law, to satisfy its oversight duties, the board must ensure that "information and reporting systems exist in the organization that are reasonably designed to provide to . . . the board itself timely, accurate information sufficient to allow . . . the board . . . to reach informed judgments concerning both the corporation's compliance with law and its business performance."<sup>18</sup>

In addition, the courts have stressed the role of knowledge when the board's actions are subjected to enhanced scrutiny as a condition to applying the business judgment rule. For example, when a board takes actions to defend the corporation from a hostile takeover attempt, *Unocal*<sup>19</sup> requires the board to conduct a "reasonable investigation" into the hostile bid.<sup>20</sup> Similarly, when the board decides to sell the company, *Revlon*<sup>21</sup> requires the board to "prov[e] that they were adequately informed."<sup>22</sup>

Finally, Delaware courts have recognized that a director's lack of knowledge may be so profound and egregious that it constitutes bad faith—a breach of the duty of loyalty.<sup>23</sup>

14. *Smith v. Van Gorkom*, 488 A.2d 858, 871 (Del. 1985), *overruled in part by Gantler v. Stephens*, 965 A.2d 695 (Del. 2009).

15. *Id.* at 872 (quoting *Aronson*, 473 A.2d at 812).

16. *Id.* at 874.

17. *Id.* at 872 (quoting *Aronson*, 473 A.2d at 812).

18. *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959, 970 (Del. Ch. 1996).

19. *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985).

20. *Id.* at 955.

21. *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182, 185 (Del. 1986).

22. *Paramount Commc'ns Inc. v. QVC Network Inc.*, 637 A.2d 34, 45 (Del. 1994).

23. *See In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 67 (Del. 2006) (holding that bad faith includes conduct by a director who "intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties" (quoting *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 755 (Del. Ch. 2005))).



### C. Knowledge and the Federal Securities Laws

The federal securities laws do not *require* that directors be knowledgeable to serve on a board of directors. However, the federal securities laws do require public companies to *disclose* information about each director's qualifications to serve on the board, including their knowledge. In addition to describing the previous five years of business experience of each director nominee, proxy statements must disclose "the specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director."<sup>24</sup> Companies commonly identify knowledge of the company's industry and knowledge of disciplines such as strategic planning and risk management as "desired skills" for their board.<sup>25</sup> Companies often disclose this information in a matrix, with each desired skill presented on one axis and the names of each nominee presented on the other axis.<sup>26</sup>

In addition to this general disclosure requirement regarding a director's qualifications to serve on the board of directors, the SEC has adopted specific knowledge-based disclosure requirements for directors serving on the company's audit committee. Specifically, the SEC requires the company to disclose whether there is at least one "audit committee financial expert" serving on its audit committee, and if not, why not.<sup>27</sup> To qualify as an audit committee financial expert, the director must have certain prescribed knowledge, including an understanding of generally accepted accounting principles, financial statements, and internal controls over financial reporting.<sup>28</sup>

The SEC has recently proposed rules that may add an additional knowledge-based disclosure requirement.<sup>29</sup> If these rules are adopted, public companies will have to disclose "whether any member of . . .

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24. 17 C.F.R. § 229.401(e) (2023).

25. See, e.g., TARGET CORP., 2022 PROXY STATEMENT AND NOTICE OF ANNUAL MEETING OF SHAREHOLDERS 22 (2022), [https://corporate.target.com/getmedia/a5039e64-758c-4f33-a972-ff7255813e7a/Target\\_Proxy-Statement\\_2022.pdf](https://corporate.target.com/getmedia/a5039e64-758c-4f33-a972-ff7255813e7a/Target_Proxy-Statement_2022.pdf) [<https://perma.cc/MX9Z-FSBL>].

26. Using a director skills matrix is not required by the SEC, but it is a good disclosure practice. See, e.g., Maia Gez et al., *Key Considerations for the 2022 Annual Reporting and Proxy Season, Part II: Proxy Statement Considerations*, WHITE & CASE (Feb. 18, 2022), <https://www.whitecase.com/insight-alert/key-considerations-2022-annual-reporting-and-proxy-season> [<https://perma.cc/HZ7W-KDDB>] (recommending that clients include a board skills matrix in their proxy statements).

27. 17 C.F.R. § 229.407(d)(5)(i). If the company does have an audit committee financial expert, the company must disclose the name of the person in the company's proxy statement. *Id.*

28. *Id.* § 229.407(d)(5)(ii).

29. The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334 (proposed Apr. 11, 2022) (to be codified at 17 C.F.R. pts. 210, 229, 232, 239, and 249).

[the] board of directors has expertise in climate-related risks, with disclosure in such detail as necessary to fully describe the nature of the expertise.”<sup>30</sup>

#### *D. Knowledge and Stock Exchange Listing Rules*

In general, stock exchanges do not require directors of public companies to be knowledgeable. However, like the SEC, the stock exchanges recognize that directors serving on audit committees must have specialized knowledge. These listing rules go beyond the SEC’s more limited disclosure approach. The New York Stock Exchange (NYSE) and Nasdaq Stock Market include explicit knowledge-based qualification requirements for directors serving on a public company’s audit committee. The NYSE requires that each member of the audit committee must be “financially literate” and at least one member of the audit committee must have “accounting or related financial management expertise.”<sup>31</sup> Similarly, Nasdaq requires that each member of the audit committee must “be able to read and understand fundamental financial statements, including a Company’s balance sheet, income statement, and cash flow statement” and at least one member of the audit committee must have “past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.”<sup>32</sup>

#### *E. Knowledge and the Board Nomination Process*

At public companies, a board committee—the nominating/corporate governance committee (the “nominating committee”)—is tasked with nominating qualified individuals to serve on the board of directors.<sup>33</sup>

30. *Id.* at 21359.

31. N.Y. STOCK EXCH., NEW YORK STOCK EXCHANGE LISTED COMPANY MANUAL § 303A.07 (2022) [hereinafter NYSE COMPANY MANUAL], <https://nyseguidesr.rules.com/listed-company-manual/09013e2c85c0074b> [<https://perma.cc/3XAJ-4S94>].

32. NASDAQ, THE NASDAQ STOCK MARKET LLC RULES § 5605(c)(2)(A) (2022) [hereinafter NASDAQ STOCK MARKET RULES], <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%205600%20Series> [<https://perma.cc/SF6N-E6CZ>].

33. The NYSE requires listed companies to have an independent “nominating/corporate governance committee” that must “identify individuals qualified to become board members, consistent with criteria approved by the board,” and “select . . . the director nominees for the next annual meeting of shareholders.” NYSE COMPANY MANUAL, *supra* note 31, § 303A.04. Nasdaq does not require listed companies to have a nominating committee, but directors must be nominated either by an independent nominating committee or a majority of independent directors. NASDAQ STOCK MARKET RULES, *supra* note 32, § 5605(e).

The committee is guided by criteria identified by the full board, and the criteria are usually very general and non-objectionable.<sup>34</sup> Target's criteria for board membership offers a typical example:

Directors should have broad perspective, experience, knowledge and independence of judgment, and a high degree of interest and involvement. The Board as a whole should consist predominantly of persons with strong business backgrounds that span multiple industries. Diversity, equity, and inclusion are recognized as highly desirable and, accordingly, the Board seeks Directors who can bring different sets of experiences and perspectives to the Board.<sup>35</sup>

Thus, an individual's knowledge—of director responsibilities, of the company's business and industry, and of specific disciplines related to the operations of a public company, including but not limited to finance, strategic planning, technology, risk management, and ESG—is certainly a paramount consideration for nomination to a public company board.

Each year, the nominating committee is responsible for determining whether sitting directors should be renominated to the board, as well as deciding whether new directors should join the board.<sup>36</sup> Not all directors will be knowledgeable in all areas, and some directors will be more knowledgeable in certain areas than in others. It is up to the company's nominating committee to identify the right mix of directors who, collectively, have the appropriate knowledge to oversee the company.

## II. THE RELATIONSHIP BETWEEN EDUCATION AND KNOWLEDGE

### *A. How Do Individuals Become Knowledgeable?*

As discussed above, directors of public companies should be knowledgeable, but how do directors—or how does anyone, for that matter—acquire knowledge? There are two ways: through experience and

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34. See Jennifer O'Hare, *Corporate Governance Guidelines: How to Improve Disclosure and Promote Better Corporate Governance in Public Companies*, 49 FLA. ST. U. L. REV. 257, 293 (2022) (surveying the statements of director qualifications standards of the fifty largest U.S. companies).

35. TARGET CORP., CORPORATE GOVERNANCE GUIDELINES 6 (2023), [https://corporate.target.com/getmedia/49fcb8b9-70d5-4528-8261-ddeeb43ccb66/Target\\_corporate-governance-guidelines.pdf](https://corporate.target.com/getmedia/49fcb8b9-70d5-4528-8261-ddeeb43ccb66/Target_corporate-governance-guidelines.pdf) [<https://perma.cc/ZVN8-3ATD>].

36. See *supra* note 33 and accompanying text.

through education. Indeed, “knowledge” is commonly defined as the information, understanding, and skills gained through experience or education.<sup>37</sup>

What is the difference between learning through experience and learning through education? Experience is the process of learning something by seeing it or doing it yourself. For example, if an individual learns that fire is hot by touching the flame, that knowledge was gained through experience. But it is not necessary to personally feel a flame to learn that fire is hot. An individual could gain this knowledge from someone who told her that fire is hot, or the individual could gain this knowledge by reading a book that explains that fire is hot. Acquiring knowledge in this way—through instruction—is education.

When hearing the word “education,” many people probably think of formal instruction at degree-bearing programs, such as high schools, trade schools, colleges, and professional schools. But education is not limited to degree-bearing programs. Education also includes instruction for purposes other than earning a formal degree. For example, an adult might take up photography as a hobby and decide to enroll in night classes at a local community center for fun. Or an employee may want to upgrade her skill set for career advancement, so she participates in training programs offered by her employer as a form of professional development. A specific type of non-degree education is “continuing education.”

### *B. Continuing Education*

As used in this Article, “continuing education” is defined as the post-degree instruction undertaken by individuals to help ensure that they have the knowledge needed to provide a service. When an individual enters a profession, she will presumably have the knowledge to provide competent service. Over time, however, the knowledge needed to provide competent service will change. After all, new techniques evolve, new challenges emerge, new laws are enacted, and new best practices are identified. If service providers are not up to date on these

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37. *Knowledge*, OXFORD LEARNER'S DICTIONARIES, <https://www.oxfordlearnersdictionaries.com/us/definition/english/knowledge> [<https://perma.cc/N69N-LQVF>] (last visited Feb. 10, 2024) (defining knowledge as “the information, understanding, and skills that you gain through education or experience”); *see also Knowledge*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/knowledge> [<https://perma.cc/4E32-GVWN>] (last visited Feb. 10, 2024) (defining knowledge as the “understanding of or information about a subject that you get by experience or study”); *Knowledge*, DICTIONARY.COM, <https://www.dictionary.com/browse/knowledge> [<https://perma.cc/2RFW-8UB8>] (last visited Feb. 10, 2024) (defining knowledge as “acquaintance with facts, truths, or principles, as from study or investigation”).

changes, they will pose a danger to their clients and/or the public. In short, continuing education helps ensure that a service provider maintains her professional competency.<sup>38</sup>

Continuing education can be delivered in different ways. It can be taught in person or online. It can be presented by an instructor, or it can be self-directed. It can consist of an hour-long presentation or a semester of coursework. It can be delivered by an instructor to one person or to an auditorium filled with hundreds of individuals. It can be provided in-house, such as by an individual's employer, or by a third-party, such as an academic institution, professional association, or an organization in the business of providing continuing education.

Certain professions imposing mandatory continuing education require that the continuing education program must be approved or "accredited" by a licensing authority. Attorneys, for example, can satisfy their mandatory continuing legal education hours only by participating in accredited programs. Continuing education providers—such as law schools, bar associations, or professional education organizations, like the Practising Law Institute—must apply to the state bar association for accreditation.

### C. Mandatory Continuing Education

To guard against this danger of "professional obsolescence," many professions require the service provider to engage in continuing education.<sup>39</sup> This is especially true for licensed professionals, such as doctors, lawyers, and accountants. The initial grant of the license is evidence that the professional had the requisite knowledge to provide services at the time she entered the profession. Mandatory continuing education helps ensure that the professional continues to have the knowledge needed to competently provide service.

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38. See, e.g., Anne D. Evans, *Can Mandatory Continuing Education Be Justified?: Issues in Mandatory Continuing Professional Education*, 3 J. PRO. LEGAL EDUC. 35, 35 (1985) ("Continuing learning is necessary if competence is to be maintained."); Werner Lowenthal, *Continuing Education for Professionals: Voluntary or Mandatory?*, 52 J. HIGHER EDUC. 519, 522 (1981) (noting that if maintaining competency is the problem, "the solution would be to have the professionals learn and apply current knowledge and skills").

39. E.g., 63 PA. CONS. STAT. § 9.8b(b) (2022) (mandatory continuing education for accountants); FIN. INDUS. REGUL. AUTH. R. 1240 (2022) (mandatory continuing education for securities brokers); 63 PA. CONS. STAT. § 625.507(a) (2022) (mandatory continuing education for chiropractors); 63 PA. CONS. STAT. § 122(j.2)(2)(i) (2022) (mandatory continuing education for dentists); 63 PA. CONS. STAT. § 122(j.2)(2)(ii) (2022) (mandatory continuing education for dental hygienists); 63 PA. CONS. STAT. § 221(c) (2022) (mandatory continuing education for dietitians); 63 PA. CONS. STAT. § 479.10(b)(2) (2022) (mandatory continuing education for funeral directors); 63 PA. CONS. STAT. § 909.1(b) (2022) (mandatory continuing education for landscape architects); 63 PA. CONS. STAT. § 627.6(b)(ii) (2022) (mandatory continuing education for massage therapists); 63 PA. CONS. STAT. § 1918(a) (2022) (mandatory continuing education for social workers); OR. ADMIN. R. 331-915-0055 (2022) (mandatory continuing education for tattoo artists).

The benefits of mandatory continuing education are so obvious that it seems difficult, if not impossible, to argue against it. After all, wouldn't everyone want their doctor, or their attorney, or their accountant, to have up-to-date skills and knowledge before providing services? However, critics have made several arguments against mandatory continuing education.<sup>40</sup>

First, mandatory continuing education does not necessarily result in greater competency. For continuing education to be effective, the content of the education must be targeted to address a particular professional's need for knowledge. But this does not necessarily occur. Licensing boards do not keep records on the competency levels of each licensed professional. Nor do they cross-check a professional's choice of continuing education program to ensure that it will lead to greater competency. Moreover, licensing boards do not require the continuing education to be relevant to the professional's area of expertise. As an example, a securities attorney could obtain "continuing legal education" credits by attending programming on family law.<sup>41</sup> Obviously, this continuing education will not help maintain the lawyer's professional competency to practice securities law. Second, mandatory continuing education can be expensive. Thus, for many professionals, continuing education amounts to nothing more than a costly and time-consuming box to check each year.

Finally, if the professional does not want to learn, the continuing education will not be effective. A continuing education provider cannot require attendees to be attentive, and even if a continuing education provider imposed such a requirement, it would be extremely difficult

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40. For a good discussion of the arguments for and against mandatory continuing education in general, see Lowenthal, *supra* note 38, at 523-30. For arguments against mandatory education for attorneys, see Lisa A. Grigg, *The Mandatory Continuing Legal Education (MCLE) Debate: Is It Improving Lawyer Competence or Just Busy Work?*, 12 BYU J. PUB. L. 417, 425-27 (1998); David D. Schein, *Mandatory Continuing Legal Education: Productive or Just PR?*, 33 GEO. J. LEGAL ETHICS 301 (2020).

41. For example, New York requires that experienced attorneys complete twenty-four hours of accredited continuing legal education each biennial reporting cycle in ethics and professionalism, skills, law practice management, areas of professional practice, diversity, inclusion and elimination of bias, or cybersecurity, privacy, and data protection, at least four (4) credit hours of which shall be in ethics and professionalism, at least one (1) credit hour of which shall be in diversity, inclusion, and elimination of bias, and at least one (1) credit of which shall be in cybersecurity, privacy, and data protection. N.Y. COMP. CODES R. & REGS. tit. 22, § 1500-22(a) (2023). "Areas of Professional Practice" is defined broadly as including,

among other things, corporations, wills/trusts, elder law, estate planning/administration, real estate, commercial law, civil litigation, criminal litigation, family law, labor and employment law, administrative law, securities, tort/insurance practice, bankruptcy, taxation, compensation, intellectual property, municipal law, landlord/tenant, environmental law, entertainment law, international law, social security and other government benefits, and alternative dispute resolution procedures.

*Id.* § 1500.2(f). There is no requirement that the continuing education class relates to the attorney's area of professional practice.

if not impossible to enforce. Mandatory continuing education, therefore, will only help those professionals who truly want to learn or who believe that they will be sanctioned for failing to learn.

### III. CONTINUING EDUCATION AND DIRECTORS OF PUBLIC COMPANIES

#### A. *What Is Continuing Education for Directors?*

##### 1. *Content of Continuing Education*

Continuing education for directors is instruction to help directors satisfy their fiduciary responsibilities and enhance their board performance. Although most companies do not require continuing education for directors, some directors voluntarily participate in continuing education. The content of these continuing education programs varies widely.<sup>42</sup> The content can be loosely grouped into five categories:

- Sessions designed to educate directors on their fiduciary duties of care and loyalty;<sup>43</sup>
- Sessions designed to improve the internal workings of the board and board committees, such as instruction on board leadership, board committee structure, and board evaluation;<sup>44</sup>
- “Re-boarding” programs designed to help long-serving directors refresh their understanding of the company’s operations, strategy, and industry;

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42. For an example of potential topics, see SIDLEY AUSTIN LLP, THE SIDLEY BEST PRACTICES CALENDAR FOR CORPORATE BOARDS AND COMMITTEES 20 (2023), <https://www.sidley.com/-/media/uploads/sidley-best-practices-calendar-january-2023.pdf?la=en> [<https://perma.cc/ADG2-M4TX>] (listing possible subjects for continuing education programs, including board oversight responsibilities, shareholder activism, risk management, ESG, industry trends, and director confidentiality obligations).

43. For example, part of this year’s “Directors’ Consortium” program, which is presented jointly by Stanford’s Business School and Law School, includes instruction intended to help directors “understand [their] fiduciary, legal, and ethical oversight responsibilities.” *Directors’ Consortium, Overview*, STAN. GRADUATE SCH. BUS., <https://www.gsb.stanford.edu/exec-ed/programs/directors-consortium> [<https://perma.cc/ZP2V-KV58>] (last visited Feb. 10, 2024).

44. For example, the Wharton School of Business offers a “Boards That Lead” continuing education program for directors. According to the program materials, directors will learn “what constitutes a strong board while acquiring the skills to more easily collaborate, lead, and motivate each other and management.” *Boards That Lead: Corporate Governance That Builds Value*, WHARTON, <https://executiveeducation.wharton.upenn.edu/for-individuals/all-programs/boards-that-lead-corporate-governance-that-builds-value/> [<https://perma.cc/KVP2-7YLH>] (last visited Feb. 10, 2024). Topics include how to design an effective board and how to succeed in the boardroom. *Id.*

- Sessions designed to instruct directors in specific board oversight areas, such as strategic planning, risk management, finance, ESG, and CEO compensation and succession;<sup>45</sup> and
- Sessions designed to educate directors on “hot topics” or emerging challenges, such as cryptocurrency, the war in Ukraine, and the SEC’s forthcoming climate risk disclosure rules.<sup>46</sup>

## 2. Providers of Continuing Education

There are four approaches to providing continuing education to boards.<sup>47</sup> First, a company’s management team can provide continuing education in-house for its directors.<sup>48</sup> Under this approach, the company’s own officers are the education providers. They provide the training at board meetings or special training opportunities.

Second, a company can retain a third party to provide continuing education in-house for its directors.<sup>49</sup> Under this approach, an outside expert will make an in-house presentation to the board on a requested topic.

Third, a company can send directors to attend programs presented by third-party providers.<sup>50</sup> There are several well-known organizations in the business of providing instruction to boards, such as the National Association of Corporate Directors (NACD), which offers hundreds of programs each year to directors on topics ranging from “Board Fundamentals” to “Risk” to “Sustainability & Social Responsibility.”<sup>51</sup> There are also several academic institutions with specialized continuing education programs for directors.<sup>52</sup> For example, each year Stanford Law School presents its “Directors’ College,” a three-day program providing

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45. For example, the National Association of Corporate Directors, which is one of the largest providers of continuing education for directors, currently offers programs in all of these areas. *All Courses and Events*, NACD, <https://www.nacdonline.org/education-and-events/all-courses-events/> [https://perma.cc/C2FB-C7XB] (last visited Feb. 10, 2024).

46. For example, the Harvard Business School currently offers an “Advanced Corporate Director Seminar,” which is intended to help directors “address emerging challenges—from the need to keep pace with technological advances to the pressures of responding to issues like climate change.” *Advanced Corporate Director Seminar*, HARV. BUS. SCH., <https://www.exed.hbs.edu/advanced-corporate-director-seminar/curriculum> [https://perma.cc/74TE-ASPT] (last visited Jan. 15, 2023).

47. See, e.g., NATALIE COOPER ET AL., DELOITTE, BOARD PRACTICES REPORT: COMMON THREADS ACROSS BOARDROOMS 18 (2019), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/center-for-board-effectiveness/2018-board-practices-report.pdf> [https://perma.cc/AEY6-ATK2] (surveying continuing education programs).

48. *Id.*

49. *Id.*

50. *Id.*

51. *All Courses and Events*, *supra* note 45.

52. See, e.g., David Bogoslaw, *Director Education: A Guide to the Leading Programs*, GOVERNANCE INTEL (Nov. 18, 2014), <https://www.corporatesecretary.com/node/30074> [https://perma.cc/L9K9-UQFQ] (discussing education programs offered by Stanford Business School, the Wharton School of Business, Harvard Business School, and Northwestern’s Kellogg School of Management).



instruction on a wide array of issues confronting the boards of public companies.<sup>53</sup> With this kind of approach, the education will not be tailored to a specific company.

Fourth, rather than affirmatively providing education to the board, the company can offer to reimburse directors who choose to attend a continuing education program.<sup>54</sup>

### 3. *Continuing Education Credentials*

Several third-party providers of continuing education offer a credential to directors who complete their programs. The NACD, for example, offers the “NACD Directorship Certification” to individuals completing a required curriculum and passing a certification exam.<sup>55</sup> In addition, Harvard Business School offers a “Corporate Director Certificate” to directors who complete three programs in board leadership, financial reporting and internal controls, and executive compensation.<sup>56</sup>

#### *B. Continuing Education and Good Corporate Governance Practices*

Continuing education for a director is recommended as a “best practice” by many corporate governance experts.<sup>57</sup> Important governmental commissions and other organizations seeking to improve corporate governance practices have issued “principles” or “guidelines,” and they almost uniformly recommend that directors of public companies engage in ongoing education. For example, the Cadbury Report—a highly influential report issued by the U.K.’s Committee on the Financial Aspects of Corporate Governance in 1992 following the Enron scandal—advised in its “Code of Best Practice” that “[g]iven the varying backgrounds, qualifications and experience of directors, it is highly desirable that they should all undertake some form of internal or external training.”<sup>58</sup> Similarly, the Organisation for Economic Co-operation and

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53. *Stanford Directors' College*, STAN. L. SCH., <https://law.stanford.edu/arthur-and-toni-rembe-rock-center-for-corporate-governance/programs/#slnav-directors-college> [<https://perma.cc/R2XN-LTXP>] (last visited Feb. 10, 2024).

54. See COOPER ET AL., *supra* note 47, at 18.

55. *NACD Directorship Certification*, NACD, <https://www.nacdonline.org/nacd-credentials/nacd-directorship-certification/certified-directors/> [<https://perma.cc/C4GH-PDCC>] (last visited Feb. 10, 2024).

56. *Corporate Director Certificate*, HARV. BUS. SCH., <https://www.exed.hbs.edu/corporate-director-certificate> [<https://perma.cc/JD6N-F979>] (last visited Feb. 10, 2024).

57. See, e.g., WALTER A. EFFROSS, *CORPORATE GOVERNANCE: PRINCIPLES AND PRACTICES* 55-56 (2d ed. 2013) (discussing continuing education for directors); see also *THE HANDBOOK OF BOARD GOVERNANCE: A COMPREHENSIVE GUIDE FOR PUBLIC, PRIVATE, AND NOT-FOR-PROFIT BOARD MEMBERS* 320-21 (Richard Leblanc ed., 2d ed. 2020) (recommending that participation in continuing education be included in a director position description).

58. *REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE* § 4.19 (1992), <https://ecgi.global/sites/default/files/codes/documents/cadbury.pdf> [<https://perma.cc/6W9S-AUGW>].

Development (OECD) in partnership with the G20 issued its “Principles of Corporate Governance,” which encourage continuing education for directors.<sup>59</sup>

Private groups also recommend continuing education for directors. For example, the Council of Institutional Investors recommends continuing education in its “Corporate Governance Policies.”<sup>60</sup> Even business-led groups recognize the importance of continuing director education. For instance, both the “Principles of Corporate Governance,”<sup>61</sup> issued by the Business Roundtable, and the “Commonsense Corporate Governance Principles 2.0,”<sup>62</sup> issued by the CEOs of some of the largest corporations and institutional investors, recommend that directors participate in continuing education. In addition, corporate governance consultants and advisors also recommend continuing education for boards,<sup>63</sup> as have corporate law firms.<sup>64</sup>

59. OECD, G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE 53 (2015), <https://www.oecd-ilibrary.org/docserver/9789264236882-en.pdf?expires=1708280915&id=id&acname=guest&checksum=877F072C3D953B197E64DB62ED97B005> [<https://perma.cc/87WN-K7RV>].

60. COUNCIL OF INSTITUTIONAL INVS., CORPORATE GOVERNANCE POLICIES § 2.12a (2022), [https://www.cii.org/files/09\\_21\\_22\\_corp\\_gov\\_policies.pdf](https://www.cii.org/files/09_21_22_corp_gov_policies.pdf) [<https://perma.cc/XC23-2Z6T>] (“Directors should receive training from independent sources on their fiduciary responsibilities . . . Directors have an affirmative obligation to become and remain independently familiar with company operations . . .”).

61. BUS. ROUNDTABLE, PRINCIPLES OF CORPORATE GOVERNANCE 22 (2016), <https://s3.amazonaws.com/brt.org/Principles-of-Corporate-Governance-2016.pdf> [<https://perma.cc/AMX7-MY3L>] (“Directors should be encouraged to take advantage of educational opportunities in the form of outside programs or ‘in board’ educational sessions led by members of senior management or outside experts.”).

62. COMMONSENSE CORPORATE GOVERNANCE PRINCIPLES 2.0, at 6 (2018), <https://www.governanceprinciples.org/wp-content/uploads/2018/10/CommonsensePrinciples2.0.pdf> [<https://perma.cc/REP6-QXCT>] (“A board should be continually educated on the company and its industry . . .”).

63. For example, Ernst & Young notes that:

The best board members have traditional leadership values and skills, such as strong ethics and integrity; diligence and conscientiousness; an executive-level ability to communicate with, inspire and empower others; and a commitment to progress. Besides these qualities, board members should demonstrate curiosity, a continual learning mindset and a forward-looking entrepreneurial energy. They should be well prepared, stay abreast of governance issues and look to continually improve their performance.

EY CTR. FOR BD. MATTERS, ERNST & YOUNG LLP, HOW TO ACHIEVE ENDURING BOARD EFFECTIVENESS 5 (2022).

64. See, e.g., Martin Lipton, *Thoughts for Boards: Key Issues in Corporate Governance for 2023*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Dec. 1, 2022), <https://corpgov.law.harvard.edu/2022/12/01/thoughts-for-boards-key-issues-in-corporate-governance-for-2023/> [<https://perma.cc/7MC8-BVDP>] (recommending that boards should be provided “with regular tutorials by internal and external experts as part of expanded director education”).

### C. Current Law Governing Continuing Education for Directors

#### 1. State Corporate Law

State corporate law statutes do not require that directors participate in continuing education. While knowledge is an essential part of a director's fiduciary duties,<sup>65</sup> courts have not held that boards must engage in ongoing education to meet those fiduciary duties.<sup>66</sup>

#### 2. The Federal Securities Laws

While the SEC requires public companies to disclose information about the qualifications of directors to serve on the board<sup>67</sup> and other corporate governance practices,<sup>68</sup> it does not require public companies to disclose any information about whether they have adopted continuing education policies or whether directors participate in continuing education.<sup>69</sup>

#### 3. Stock Exchange Listing Rules

Neither the NYSE nor Nasdaq require listed companies to adopt continuing education policies for directors. However, the NYSE does require listed companies to adopt "Corporate Governance Guidelines" that disclose each company's policies on seven corporate governance

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65. See *supra* Part I.

66. Interestingly, encouraging or requiring directors to participate in continuing education is sometimes part of a public company's settlement of a derivative action brought against the board for breach of fiduciary duty. See, e.g., Notice of Pendency and Proposed Settlement of S'holder Derivative Litig., *In re* GoPro S'holder Derivative Litig., No. 4:18-CV-00920-CW (N.D. Cal. Feb. 4, 2021), ECF No. 60, <https://www.investors.com/promoted-content/notice-of-pendency-and-proposed-settlement-of-shareholder-derivative-litigation/> [<https://perma.cc/SU27-B2LP>].

67. For example, the SEC requires companies to disclose for each director nominee "the specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director." 17 C.F.R. § 229.401(e) (2023). In addition, the SEC requires companies to

[d]escribe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess.

*Id.* § 229.407(c).

68. Item 407 of Regulation S-K requires companies to disclose information about director independence, board meetings, board committee meetings, board committees, the board's shareholder communication policy, the board's leadership structure, and the board's role in risk oversight. *Id.* § 229.407.

69. I could find only one example of a federally mandated continuing education requirement for directors of corporations. The Farm Credit Administration requires directors of farmer-owned lending institutions that provide credit to farmers to "complete director orientation training within 1 year of assuming their position and require incumbent directors to attend training periodically to advance their skills." 12 C.F.R. § 611.210(b) (2023).

subjects—including continuing education for directors.<sup>70</sup> The continuing education policies disclosed in the Corporate Governance Guidelines of sixty public companies are analyzed in Part IV of this Article.<sup>71</sup>

#### IV. SURVEY: DIRECTOR EDUCATION PRACTICES AT PUBLIC COMPANIES

As discussed above,<sup>72</sup> no U.S. laws require directors of public companies to engage in continuing education. Therefore, it is up to the company to decide. To determine whether public companies require their directors to engage in continuing education, I reviewed the Corporate Governance Guidelines, Committee Charters, and Proxy Statements of sixty public companies. This sample includes smaller, mid-size, and large public companies. The sixty companies are:

<b>Large Companies<sup>73</sup></b>	<b>Mid-Size Companies<sup>74</sup></b>	<b>Smaller Companies<sup>75</sup></b>
Alphabet (A and C)	Allegheny Corp. (NY)	Agree Realty
Amazon	Brighthouse Financial	AMN Healthcare Services
Apple	Carlisle Companies	Asbury Automotive Group
AT&T	Curtiss-Wright	Chico's FAS
Berkshire Hathaway (Class B)	Essential Utilities	Ellington Financial
Chipotle Mexican Grill	Fair Isaac & Co.	ExlService Holdings
Duke Energy Corporation	First Horizon	Exponent
Etsy	Fluor	Green Plains

70. NYSE COMPANY MANUAL, *supra* note 31, § 303A.09. The seven topics are: (1) director qualifications; (2) director responsibilities; (3) director access to management and independent advisors; (4) director compensation; (5) director orientation and continuing education; (6) management succession; and (7) annual performance evaluation of the board. *Id.*

71. *See infra* Part IV.

72. *See supra* Section III.C.

73. The sample was obtained from the S&P 500 index, the leading stock market index of U.S. companies with the largest market capitalizations. The sample includes the top ten constituent companies by index weight as of August 1, 2022, and ten other randomly selected companies from the index.

74. The sample was obtained from the S&P MidCap 400 index, a stock market index of mid-sized U.S. companies. The sample includes the top ten constituent companies by index weight as of August 1, 2022, and ten other randomly selected companies from the index.

75. The sample was obtained from the S&P SmallCap 600 index, a stock market index of smaller-sized U.S. companies. The sample includes the top ten constituent companies by index weight as of August 1, 2022, and ten other randomly selected companies from the index.

Large Companies	Mid-Size Companies	Smaller Companies
Freeport-McMoRan	Ingredion	Helmerich & Payne
Johnson & Johnson	LivaNova	Kaiser Aluminum
JPMorgan Chase & Co.	NuVasive	Lantheus Holdings
Microsoft	Range Resources	NBT Bancorp
Mohawk Industries	Reliance Steel & Aluminum	Omnicell
Nvidia	Service Corporation International	Prestige Consumer Healthcare
PepsiCo	STAAR Surgical	Rogers
Southwest Airlines	Steel Dynamics	Southwestern Energy Co.
Tesla	Targa Resources	SpartanNash
Tractor Supply Co.	Travel + Leisure Co.	Unifi
UnitedHealth Group	United Therapeutics	Vonage Holdings
Zebra Technologies	Yeti Holdings	Zumiez

As discussed in more detail below,<sup>76</sup> my findings indicate that practically no public companies require their directors to participate in mandatory continuing education. Moreover, public companies disclosed very little information about their continuing education practices and policies to the public.<sup>77</sup>

#### *A. Public Companies Do Not Require Continuing Education for Their Directors*

As shown below in Table 1, practically none of the surveyed public companies require continuing education for their directors. Instead, these companies “encourage”<sup>78</sup> or “expect”<sup>79</sup> their directors to participate in continuing education. Although this finding was true across all

76. See *infra* Section IV.A.

77. See *infra* Sections IV.C-G.

78. For example, Apple stated that “directors are encouraged to attend accredited director education programs at the Corporation’s expense.” APPLE INC., CORPORATE GOVERNANCE GUIDELINES 2 (2022), [https://s2.q4cdn.com/470004039/files/doc\\_downloads/gov\\_docs/Corporate-Governance-Guidelines.pdf](https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/Corporate-Governance-Guidelines.pdf) [<https://perma.cc/TV8F-DGPQ>].

79. For example, Nvidia provides that “[e]ach director is expected to participate in continuing education to maintain the necessary level of expertise to perform his or her responsibilities.” NVIDIA CORP., GOVERNANCE POLICIES OF THE BOARD OF DIRECTORS 3 (2023), [https://s201.q4cdn.com/141608511/files/doc\\_downloads/governance\\_documents/2023/03/NVIDIA-Corporate-Governance-Policies-\(Mar.-2-2023\).pdf](https://s201.q4cdn.com/141608511/files/doc_downloads/governance_documents/2023/03/NVIDIA-Corporate-Governance-Policies-(Mar.-2-2023).pdf) [<https://perma.cc/9Y29-8XGK>].

sizes of companies, it was most pronounced in mid-sized companies; none of the twenty mid-sized companies surveyed require ongoing director education.

**Table 1: Mandatory Continuing Education for Directors<sup>80</sup>**

Type of Company	Required	Not Required
Large (n=20)	15%	85%
Mid-Size (n=20)	0%	100%
Smaller (n=20)	5%	95%
Total (n=60)	7%	93%

*B. Most Public Companies Require Orientation for Their New Directors*

On the other hand, almost 75% of the surveyed public companies require new directors to participate in orientation or onboarding programs. However, this requirement varies by the size of the company. Smaller companies are most likely to require orientation, with 90% of surveyed companies imposing mandatory orientation. Large companies follow closely, with 80% of surveyed companies imposing mandatory orientation. However, only 45% of mid-sized companies require new directors to participate in orientation.

**Table 2: Mandatory Orientation for New Directors<sup>81</sup>**

Type of Company	Required	Not Required
Large (n=20)	80%	20%
Mid-Size (n=20)	45%	55%
Smaller (n=20)	90%	10%
Total (n=60)	72%	28%

*C. Companies Did Not Disclose Whether Their Directors Participated in Continuing Education*

The SEC does not require companies to disclose the number of directors who participated in continuing education during the previous year, and none of the surveyed companies voluntarily disclosed this information to the public. Therefore, while directors of public companies may be required, encouraged, or expected to engage in continuing education, it is impossible to know whether directors at these companies actually do so.

80. See *infra* Appendix, Column 4.

81. See *infra* Appendix, Column 3.

*D. Companies Did Not Disclose Whether Continuing Education Is Monitored or Part of the Director Annual Evaluation Process*

Similarly, public companies are not required to disclose whether director participation in continuing education is monitored by the company, and only three of the surveyed companies publicly stated that it was.<sup>82</sup> For the remaining companies, it could be that they are monitoring director participation in continuing education programs, but they chose not to disclose this information. On the other hand, the silence could mean that the company is not keeping track of the participation of its board in continuing education or is not considering a director's participation in continuing education in the company's board evaluation process.

*E. Companies Did Not Report on the Continuing Education Their Directors Received over a Specific Time Period*

Companies did not report on the continuing education their directors actually received during a specific time period. For example, of the surveyed companies, only one company described the continuing education its board received during the previous year. Specifically, the 2022 Proxy Statement of JPMorgan Chase & Co. stated:

In 2021, directors were provided with education on subjects including the following: the Firm's products, services and lines of business; cybersecurity and technology, including an update on the Firm's cybersecurity modernization strategy and cyber threats landscape; diversity, equity and inclusion ("DEI"); ESG matters, including the Firm's climate risk management framework; significant and emerging risks; and key laws, regulations and supervisory requirements applicable to the Firm.<sup>83</sup>

While JPMorgan Chase & Co. disclosed the types of information its directors were briefed on during 2021, it did not disclose other important information about the continuing education received by its board, such as the amount of time that was devoted to continuing education.<sup>84</sup>

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82. The three companies are Alphabet, Freeport-McMoRan, and STAAR Surgical. See *infra* Appendix, Column 5.

83. JPMORGAN CHASE & CO., 2022 ANNUAL MEETING OF SHAREHOLDERS PROXY STATEMENT 27 (2022), <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/proxy-statement2022.pdf> [<https://perma.cc/3HN5-73TT>].

84. See *id.*

*F. Companies Did Not Disclose Whether  
They Adopted Formal Director Continuing  
Education Policies or Guidelines*

In general, public companies did not disclose whether they adopted formal policies or guidelines that provide information about their approach to continuing education for directors. Of the surveyed companies, only three stated that they had a director continuing education policy, but none of them chose to disclose the policy.<sup>85</sup> Although public companies are required to disclose several corporate governance policies on their corporate website, a director continuing education policy is not one of them.<sup>86</sup>

It could be that other public companies have also adopted director continuing education policies, but because this information was not disclosed, it is impossible to know whether public companies have adopted these policies.

*G. Companies Disclosed Little  
Information About Their Continuing  
Education Practices*

In general, companies disclosed very little information about their continuing education practices. Most surveyed companies did not define “continuing education” or specify the topics that should be covered as part of continuing education for directors.<sup>87</sup> However, a few of the surveyed companies provided broad examples of the kinds of subjects that should be included, such as “topics related to the [Company]’s business, including international markets, accounting and finance, leadership, risk assessment, industry practices, general management, sustainability, and strategic planning.”<sup>88</sup>

Most surveyed companies tied the content of any required or expected continuing education to the purpose of continuing education: ensuring that directors have the level of expertise necessary to perform their duties as directors.<sup>89</sup> For example, United Therapeutics stated

85. These companies are LivaNova, Rogers, and SpartanNash. *See infra* Appendix, Column 9.

86. For example, the NYSE requires listed companies to post their “code of business conduct and ethics” on their corporate websites. NYSE COMPANY MANUAL, *supra* note 31, § 303A.10. In addition, the NYSE requires listed companies to post their “corporate governance guidelines” on their corporate websites. *Id.* § 303A.09. Sometimes, public companies are given the choice to post certain policies on their corporate websites or include the policies in their proxy statements. *See* 17 C.F.R. § 229.407(b) (2023) (policy relating to director attendance at annual shareholders meeting); *id.* § 229.407(f) (process relating to shareholder communication with the board).

87. *See infra* Appendix, Column 2.

88. PEPSICO, INC., CORPORATE GOVERNANCE GUIDELINES 7 (2024), [https://www.pepsico.com/docs/default-source/corporate-governance/corporate-governance-guidelines.pdf?sfvrsn=591b98f0\\_3](https://www.pepsico.com/docs/default-source/corporate-governance/corporate-governance-guidelines.pdf?sfvrsn=591b98f0_3) [<https://perma.cc/PME3-6HWR>].

89. *See infra* Appendix, Column 2.



that “[t]he Board encourages directors to participate in education programs to assist them in performing their responsibilities as directors.”<sup>90</sup>

As shown below in Table 3, approximately 73% of surveyed companies provided information, though limited, relating to how directors would receive continuing education, i.e., internally by company employees or externally through attendance at a director education program offered by a third party.<sup>91</sup> Smaller companies were much more likely to depend on their own employees to educate directors. Large and mid-size companies generally relied on third-party programs for director education.<sup>92</sup>

**Table 3: Type of Director Education Program**<sup>93</sup>

Type of Company	Internal	External	Combination	Did Not Disclose
Large (n=20)	5%	35%	30%	30%
Mid-Size (n=20)	10%	30%	30%	30%
Smaller (n=20)	50%	20%	10%	20%
Total (n=60)	22%	28%	23%	27%

However, companies did not disclose how much continuing education was necessary or specify the number of hours of continuing education that the directors should complete each year. In fact, of the surveyed companies, only one company mentioned the amount of continuing education its board should receive, albeit vaguely. UnitedHealth Group stated that “[e]ach director is expected to receive board-related continuing education of an agreed-upon amount.”<sup>94</sup> However, the “agreed-upon amount” was not disclosed.

90. UNITED THERAPEUTICS CORP., CORPORATE GOVERNANCE GUIDELINES 6 (2021), <https://ir.unither.com/~media/Files/U/United-Therapeutics-IR/documents/corporate-governance/Corporate-Governance-Guidelines-FINAL-4-20-2023.pdf> [<https://perma.cc/C32K-49KX>].

91. See *infra* Appendix, Column 7.

92. Specifically, 65% of the surveyed large companies alluded to third-party director education programs in their Corporate Governance Guidelines, while 60% of the surveyed mid-size companies did so. However, only 30% of the smaller companies mentioned third-party education programs in their Corporate Governance Guidelines. See *infra* Appendix, Column 7.

93. See *infra* Appendix, Column 7.

94. UNITEDHEALTH GRP. INC., BOARD OF DIRECTORS: PRINCIPLES OF GOVERNANCE 7 (2023), <https://www.unitedhealthgroup.com/content/dam/UHG/PDF/About/UNH-Principles-of-Governance.pdf> [<https://perma.cc/XJ7J-S3JZ>].

*H. For Most Companies, the Nominating  
Committee Was Responsible for Overseeing  
Continuing Education*

As shown below in Table 4, two-thirds of the surveyed companies disclosed who was responsible for overseeing continuing education for directors.<sup>95</sup> For most of these companies, it was the nominating committee (or a combined nominating/corporate governance committee).<sup>96</sup>

**Table 4: Responsibility for Director Education<sup>97</sup>**

Type of Company	Nominating Committee	The Board	Other	Did Not Disclose
Large (n=20)	55%	5%	5%	35%
Mid-Size (n=20)	40%	10%	10%	40%
Smaller (n=20)	65%	0%	10%	25%
Total (n=60)	53%	5%	8%	33%

*I. Approximately 25% of Public  
Companies Highlighted Their Director  
Education Practices in Their Proxy Statements*

Although public companies are not required to discuss continuing education for directors, a surprising number of surveyed companies—27%—did so in their most recent proxy statement.<sup>98</sup> This was especially true for large public companies. As shown below in Table 5, 40% of the surveyed large public companies identified their director education program as a corporate governance “Highlight” or a corporate governance “Best Practice.”<sup>99</sup>

95. See *infra* Appendix, Column 6.

96. See *infra* Appendix, Column 6.

97. See *infra* Appendix, Column 6.

98. See *infra* Appendix, Column 8.

99. Eight companies highlighted director education in their proxy statements. See ALPHABET, NOTICE OF 2022 ANNUAL MEETING OF STOCKHOLDERS AND PROXY STATEMENT 12 (2022), [https://abc.xyz/investor/static/pdf/2022\\_alphabet\\_proxy\\_statement.pdf?cache=348b7f1](https://abc.xyz/investor/static/pdf/2022_alphabet_proxy_statement.pdf?cache=348b7f1) [<https://perma.cc/EY2W-JEAW>] (“strong” corporate governance practice); APPLE INC., NOTICE OF 2022 ANNUAL MEETING OF SHAREHOLDERS AND PROXY STATEMENT 7 (2022), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000320193/2351ff60-50fe-46e8-997b-335c2601226c.pdf> [<https://perma.cc/FLS8-TTWZ>] (“Corporate Governance Best Practices.”); FREEMPORT-MCMORAN INC., ELECTRIFYING THE FUTURE: NOTICE OF 2022 ANNUAL MEETING OF STOCKHOLDERS AND PROXY STATEMENT 26 (2022), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000831259/dcd4fd4e-43a8-4073-ad05-662a55989e99.pdf> [<https://perma.cc/8EH7-MKS9>] (highlighted corporate governance practice); JPMORGAN CHASE & CO., *supra* note 83, at 22 (“strong” corporate governance practice); MICROSOFT CORP., NOTICE OF ANNUAL SHAREHOLDERS MEETING AND PROXY STATEMENT 2021, at 5 (2021), <https://microsoft.gcs-web.com/static-files/309956a2-bfd8-46bd-995d-c484770a1dab> [<https://perma.cc/2F7P-SJXK>] (best governance and board practices); PEPSICO, INC., NOTICE OF 2022 ANNUAL MEETING OF SHAREHOLDERS AND PROXY STATEMENT 10 (2022), <https://pepsico.gcs-web.com/static->

**Table 5: Director Education Highlighted in Proxy Statements<sup>100</sup>**

Type of Company	Highlighted	Not Highlighted
Large (n=20)	40%	60%
Mid-Size (n=20)	25%	75%
Smaller (n=20)	15%	85%
Total (n=60)	27%	73%

### *J. Conclusion*

The purpose of continuing education is to help directors maintain the skills and knowledge necessary to meet their board responsibilities. However, it is difficult for investors to determine whether a company's continuing education requirements (or expectations) accomplish this goal.

## V. DIRECTORS OF PUBLIC COMPANIES NEED CONTINUING EDUCATION

Continuing education for directors has always been important, but it is particularly important now. First, the responsibilities of the public company board have rapidly expanded over the last ten years, meaning that today's directors need more knowledge to meet their responsibilities. Second, the composition of public company boards has changed, with less experienced individuals more likely to join public company boards today. These less-experienced directors need continuing education to fill this knowledge gap. In addition, while public companies are adding new independent directors to their boards, boards still include many long-serving directors, who may need continuing education to refresh their knowledge.

### *A. The Continuing Expansion of Responsibilities of the Public Company Board*

The oversight responsibilities of the public company board have expanded and continue to expand. The expansion of responsibilities can be seen in real time through the "Spotlight on Boards" publications that have been prepared by the prominent corporate law firm

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files/664bb075-5781-47ee-b797-9186beae10cf [https://perma.cc/6NWB-X8WH] ("best" corporate governance practice); TRACTOR SUPPLY CO., NOTICE OF THE 2022 ANNUAL MEETING AND 2022 PROXY STATEMENT 24 (2022), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000916365/d910f925-370e-4f8f-9522-f2c35097a810.pdf> [https://perma.cc/4AYT-LM3Q] ("good" corporate governance practice); ZEBRA TECHS. CORP., 2022 PROXY STATEMENT 8 (2022), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000877212/fa1127a3-aae5-437c-9d22-d11fa69aa1fe.pdf> [https://perma.cc/3BTC-8CN5] (highlighted corporate governance practice).

100. See *infra* Appendix, Column 8.

Wachtell, Lipton, Rosen & Katz each year since 2010.<sup>101</sup> In these publications, Wachtell describes “what is expected from the board of directors of a public company—not just the legal rules, or the principles published by institutional investors and various corporate and investor associations, but also the aspirational ‘best practices’ that have come to have equivalent influence on board and company behavior.”<sup>102</sup> Because these Spotlights are published annually, they offer a valuable snapshot into board responsibilities at a specific point in time.

In the first Spotlight—published in 2010—Wachtell listed thirteen board responsibilities:

- CEO selection and monitoring; CEO succession
- Crisis preparation
- Executive compensation
- Director nominations; board evaluation
- Corporate strategy
- Risk management
- Corporation performance monitoring
- Legal and regulatory compliance
- Leadership role in corporate takeovers
- Corporate social responsibility
- Government and community relations
- Investor relations
- Corporate governance guidelines and committee charters<sup>103</sup>

By 2022, the list has grown to nineteen board responsibilities.<sup>104</sup>

Many of the board’s new responsibilities relate to ESG. This emphasis on ESG is fairly recent; it was first identified by Wachtell as a distinct duty in 2017, when boards were merely advised to “[d]etermine which sustainability and ESG matters to integrate into strategic and operational planning.”<sup>105</sup> Today, Wachtell has identified seven board responsibilities relating to ESG: (1) overseeing the company’s

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101. The Spotlight on Boards series of publications can be found at the “Lipton Archive,” available at <https://theliptonarchive.org/tag/spotlight-on-boards/> [<https://perma.cc/GZB4-JXKU>].

102. MARTIN LIPTON ET AL., WACHTELL, LIPTON, ROSEN & KATZ, SPOTLIGHT ON BOARDS: SPRING 2022 UPDATE 1 (2022) [hereinafter SPRING 2022 SPOTLIGHT ON BOARDS], <https://theliptonarchive.org/wp-content/uploads/WLRK.28043.22.pdf> [<https://perma.cc/CE8D-3ZM3>]. Identical language has been used in each “Spotlight” since 2010.

103. MARTIN LIPTON, WACHTELL, LIPTON, ROSEN & KATZ, THE SPOTLIGHT ON BOARDS 1 (2010) [hereinafter SPOTLIGHT ON BOARDS], <https://theliptonarchive.org/wp-content/uploads/575-The-Spotlight-on-Boards-dated-September-9-2010.pdf> [<https://perma.cc/7TVD-EDR2>].

104. SPRING 2022 SPOTLIGHT ON BOARDS, *supra* note 102.

105. MARTIN LIPTON & SABASTIAN V. NILES, WACHTELL, LIPTON, ROSEN & KATZ, THE SPOTLIGHT ON BOARDS 2017, at 4 (2017) [hereinafter 2017 SPOTLIGHT ON BOARDS], <https://theliptonarchive.org/wp-content/uploads/679-The-Spotlight-on-Boards-2017-dated-January-26-2017.pdf> [<https://perma.cc/M5YW-GVV8>].

strategy, including the corporation's purpose, "recognizing that investors want to be assured about . . . threats to long-term strategy from global, political, climate, social, economic and technological developments"; (2) overseeing the company's risk profile and management of risks, including climate-related risks; (3) setting executive compensation, taking into account the company's ESG goals; (4) overseeing management's development of ESG metrics "to understand the impact of ESG and stakeholder interests on the value and strategy of the corporation"; (5) "oversee[ing] the integration and balancing of [ESG and stakeholder] interests to promote the long-term success of the corporation"; (6) recognizing that investors and proxy advisory firms "are monitoring the board's oversight and responsiveness to ESG governance, and are comparing the corporation's performance on ESG to that of its peers"; and (7) receiving updates on the regulatory environment regarding ESG.<sup>106</sup>

The expansion of board responsibilities is not limited to ESG. A review of the Spotlight on Boards from 2010 to 2022 reveals that the breadth of board responsibilities in traditional areas has also grown significantly. This is especially apparent in three areas: strategic planning, risk management, and investor relations.

Boards have always been involved in strategic planning. In 2010, for example, Wachtell counseled boards that directors had a duty to "[p]rovide business and strategic advice to management and approve the company's budgets and long-term strategy."<sup>107</sup> The following year, Wachtell added "monitor[ing]" of long-term strategy to the board's strategic planning responsibilities.<sup>108</sup> By 2017, boards were also advised to "[b]e actively involved with management in the development . . . of a thoughtful long-term strategy for the company" and to "[u]nderstand strategic assumptions, uncertainties, judgments, alternatives and risks."<sup>109</sup> Today, the board's strategic responsibilities have broadened to encompass complete oversight of strategic planning. According to the 2022 Spotlight, boards were cautioned to "[o]versee corporate strategy (including purpose, culture and vision) and the communication of that strategy to investors, recognizing that investors want to be assured about not just current risks and problems, but also threats to long-term strategy from global, political, climate, social, economic and technological developments."<sup>110</sup>

Similar expansion of board duties can be seen in risk management. Initially, boards were responsible for determining the company's "risk

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106. SPRING 2022 SPOTLIGHT ON BOARDS, *supra* note 102, at 2-3.

107. SPOTLIGHT ON BOARDS, *supra* note 103.

108. MARTIN LIPTON, WACHTELL, LIPTON, ROSEN & KATZ, THE SPOTLIGHT ON BOARDS 1 (2011), <https://theliptonarchive.org/wp-content/uploads/592-The-Spotlight-on-Boards-dated-November-28-2011.pdf> [<https://perma.cc/FEX5-P2AL>].

109. 2017 SPOTLIGHT ON BOARDS, *supra* 105, at 1.

110. SPRING 2022 SPOTLIGHT ON BOARDS, *supra* note 102, at 2.

appetite,” adopting risk management standards, and monitoring the management of those risks.<sup>111</sup> By 2022, the responsibilities had expanded to the general “oversight” of risk management. For example, Wachtell noted that boards should

[o]versee and understand the corporation’s risk profile, as well as its management of short-, medium- and long-term risks, including climate-related risks, and how risk is taken into account in the corporation’s business decision-making and strategic planning, and recognize that they have a duty to respond to red flags warning of imminent risks, if and when they arise.<sup>112</sup>

Finally, the board’s role in investor relations has grown from merely “[p]lay[ing] close attention” to investor relations<sup>113</sup> to “[r]ecogniz[ing] that shareholder engagement has become a central component of corporate governance.”<sup>114</sup> In the past, boards were expected to engage with shareholders when “appropriate.”<sup>115</sup> Today, boards are expected to “proactive[ly]” engage with shareholders.<sup>116</sup> In addition, in 2022, Wachtell noted that boards are expected to proactively engage not only with shareholders, but with other corporate stakeholders as well.<sup>117</sup> This tremendous expansion in responsibilities means that directors need more knowledge to meet their fiduciary duties. Continuing education will help the board meet its fiduciary duties and enhance board performance.

### B. *Changing Trends in Board Composition*

As discussed above,<sup>118</sup> the expansion of board responsibilities highlights the need for continuing education for directors. This need has been exacerbated by recent trends in board composition that have seen public companies adding less-experienced directors to boards. Because they have less experience, these directors are especially in need of education to become sufficiently knowledgeable to fulfill their oversight responsibilities. Moreover, although adding these less-experienced directors has “refreshed” many boards, there are still many long-serving directors who need continuing education to update their knowledge and keep their skills fresh.

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111. SPOTLIGHT ON BOARDS, *supra* note 103, at 1.

112. SPRING 2022 SPOTLIGHT ON BOARDS, *supra* note 102, at 2.

113. SPOTLIGHT ON BOARDS, *supra* note 103, at 2.

114. SPRING 2022 SPOTLIGHT ON BOARDS, *supra* note 102, at 3.

115. SPOTLIGHT ON BOARDS, *supra* note 103, at 2.

116. SPRING 2022 SPOTLIGHT ON BOARDS, *supra* note 102, at 3.

117. *Id.*

118. *See supra* Section V.A.

### 1. Fewer Active CEOs Are Serving on Outside Boards

Active CEOs of other public companies are thought to be especially valuable members of a public company board of directors.<sup>119</sup> Their high-level professional experience makes them knowledgeable in a variety of areas, including key areas of board responsibilities such as leadership, strategic planning, and risk management. Moreover, because they are still working, active CEOs remain current in their knowledge; they are exposed to the newest challenges and issues facing public companies.

However, active CEOs of public companies are serving on fewer outside boards.<sup>120</sup> Today, almost 60% of public company CEOs do not serve on any outside boards, and that number has increased steadily over the last ten years.<sup>121</sup> Moreover, CEOs who do serve on outside boards typically limit their service to only one outside public company board.<sup>122</sup> Ten years ago, almost a quarter of all new independent directors of public companies came from the ranks of active CEOs.<sup>123</sup> In 2022, that number declined to 13%.<sup>124</sup> The loss of active CEOs serving on outside boards is a big hit to the collective knowledge of the board. Continuing education is needed to fill this void.

### 2. The Number of Directors from Line and Functional Positions Has Increased

Second, public companies are increasingly likely to recruit executives below the C-suite level to join their boards. While public

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119. LARCKER & TAYAN, *supra* note 11, at 81 (noting that CEO directors “offer a useful mix of managerial, industry, and functional knowledge”).

120. This reduction is tied to the busy schedule of a public company CEO. Recognizing this, many companies permit their CEOs to serve on only one outside board. These restrictions can also be traced to the “Big Three” institutional investors of BlackRock, State Street, and Vanguard, which have adopted proxy voting guidelines stating that they will vote against directors who are CEOs if they serve on more than two public company boards (including their own). BLACKROCK, BLACKROCK INVESTMENT STEWARDSHIP: PROXY VOTING GUIDELINES FOR U.S. SECURITIES 5 (2024), <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf> [https://perma.cc/G2NP-PMYJ]; STATE ST. GLOB. ADVISORS, PROXY VOTING AND ENGAGEMENT GUIDELINES 5 (2023); VANGUARD, PROXY VOTING POLICY FOR U.S. PORTFOLIO COMPANIES 6 (2023), [https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/policies-and-reports/us\\_proxy\\_voting\\_2023.pdf](https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/policies-and-reports/us_proxy_voting_2023.pdf) [https://perma.cc/836W-GGWZ]. The proxy advisory firms of ISS and Glass Lewis have adopted similar guidelines. GLASS LEWIS, 2023 POLICY GUIDELINES 31-32 (2023), <https://www.glasslewis.com/wp-content/uploads/2022/11/US-Voting-Guidelines-2023-GL.pdf?hsCtaTracking=45ff0e63-7af7-4e28-ba3c-7985d01e390a%7C74c0265a-20b3-478c-846b-69784730ccbd> [https://perma.cc/5X2K-VNYQ]; ISS, PROXY VOTING GUIDELINES: BENCHMARK POLICY RECOMMENDATIONS 12 (2024), <https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf> [https://perma.cc/84BZ-C9FG].

121. SPENCER STUART, 2022 U.S. SPENCER STUART BOARD INDEX 28 (2022) [hereinafter SPENCER STUART BOARD INDEX], [https://www.spencerstuart.com/-/media/2022/october/ssbi2022/2022\\_us\\_spencerstuart\\_board\\_index\\_final.pdf](https://www.spencerstuart.com/-/media/2022/october/ssbi2022/2022_us_spencerstuart_board_index_final.pdf) [https://perma.cc/4QFR-2V32].

122. *Id.*

123. *Id.* at 11.

124. *Id.*

companies have traditionally included active and retired CEOs on their boards, it is not uncommon these days to see an Executive Vice President of a line or functional area of a public company sitting on the board of a public company.<sup>125</sup> In fact, in 2022, 20% of new independent directors came from line and functional positions, a significant increase from 2012, when only 10% of new directors came from line and functional positions.<sup>126</sup>

Several reasons have been cited for this trend, including efforts to increase the board's knowledge in specialized areas, especially technology. Adding a director who has specialized knowledge improves the collective knowledge of the board, which may well reduce the board's need for continuing education, at least in that specialized area. However, continuing education is still needed—not necessarily for the board, but for the new EVP or division head who joined the board.

An example makes this clear. The nine-person board of Chipotle Mexican Grill includes Matthew Carey, who was elected to the board in 2021.<sup>127</sup> Mr. Carey is currently the Executive Vice President and Chief Information Officer of Home Depot.<sup>128</sup> Mr. Carey was invited to join the Chipotle board for his specialized knowledge in information technology and cybersecurity.<sup>129</sup> His knowledge helps the board as a whole become more knowledgeable in this important area. The downside is that because of his more limited professional experience, Mr. Carey does not have the broader knowledge necessary for directors of public companies to perform their responsibilities. In fact, according to Chipotle's 2022 proxy statement, Mr. Carey currently has only four of the thirteen skills identified by the company as "relevant and important to our company's achievement of its strategic goals."<sup>130</sup> According to Chipotle, he is not knowledgeable in the following nine areas: restaurant/food industry, human resources/talent management, finance/accounting, branding/marketing/media, real estate/commercial

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125. For example, the board of American Express includes Christopher D. Young, who is an Executive Vice President of Business Development at Microsoft Corp. See AM. EXPRESS, 2022 PROXY STATEMENT 13 (2022), [https://s26.q4cdn.com/747928648/files/doc\\_financials/2021/ar/Final-Proxy-03-18-22.pdf](https://s26.q4cdn.com/747928648/files/doc_financials/2021/ar/Final-Proxy-03-18-22.pdf) [https://perma.cc/8E5D-YGFE].

126. SPENCER STUART, 2022 S&P 500 NEW DIRECTOR SNAPSHOT 5 (2022), [https://www.spencerstuart.com/-/media/2022/july/newdirector/2022-sp500-new-director-snapshot\\_final.pdf](https://www.spencerstuart.com/-/media/2022/july/newdirector/2022-sp500-new-director-snapshot_final.pdf) [https://perma.cc/E5QE-276X].

127. See CHIPOTLE MEXICAN GRILL, INC., 2022 PROXY STATEMENT 15 (2022) [hereinafter CHIPOTLE PROXY STATEMENT] (stating Mr. Carey was elected in 2021).

128. *Id.*

129. *Chipotle Names Matt Carey and Mauricio Gutierrez to Its Board of Directors*, CHIPOTLE MEXICAN GRILL (Mar. 30, 2021), <https://ir.chipotle.com/2021-03-30-Chipotle-Names-Matt-Carey-and-Mauricio-Gutierrez-to-its-Board-of-Directors> [https://perma.cc/YBM7-K8XM].

130. CHIPOTLE PROXY STATEMENT, *supra* note 127, at 19.



leasing, international operations, sustainability/environmental, government relations, and investor relations/corporate governance.<sup>131</sup> To fill these knowledge gaps, directors like Mr. Carey need continuing education.

### 3. *The Number of First-Time Directors Has Increased*

Third, more and more public companies are adding “first-time” directors to public company boards. First-time directors are individuals who have never previously served on a public company board. In 2022, first-time directors comprised more than a third of the total number of new directors elected to public company boards, an increase of 4% in ten years.<sup>132</sup> These first-time directors often enhance the diversity of boards and bring specialized knowledge to the board. These are positive things, but they can come with a cost.

Because they have not previously served on the company’s board, first-time directors lack company-specific knowledge. Because they have not previously served on *any* public company board, they do not have experience overseeing a public company. Moreover, depending on the specific first-time director, a first-time director may also lack knowledge in some of the disciplines relating to the operations of a public company, including but not limited to finance, strategic planning, technology, risk management, and ESG. Even a first-time director who is elected because of her experience in a specific area—such as cybersecurity—will presumably not be knowledgeable in the other areas. Fortunately, the lack of knowledge attributable to a lack of experience can be offset by director education.

Note that orientation programs offered to new directors are helpful but not sufficient to ensure that first-time directors have the knowledge needed to meet their oversight responsibilities. To help newly elected directors gain the knowledge necessary to meet their board responsibilities, public companies often provide an onboarding program.<sup>133</sup> In the onboarding program, new directors will learn about the board, their fiduciary duties, and the company.<sup>134</sup> New directors will be provided with a package of written materials with basic information about the company, including copies of the company’s organizational materials, strategic plan, SEC filings, minutes of board meetings, and recent press releases.<sup>135</sup> During formal orientation sessions,

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131. *Id.*

132. SPENCER STUART BOARD INDEX, *supra* note 121, at 20.

133. *See supra* Section IV.B.

134. The substance of onboarding sessions will vary by company, but Practical Law’s “New Director Onboarding Checklist” provides a good example of “the most common elements” of a public company’s onboarding program. Prac. L. Corp. & Sec., *New Director Onboarding Checklist*, THOMSON REUTERS PRAC. L., <https://us.practicallaw.thomsonreuters.com/w-015-4567> [<https://perma.cc/8MRC-M56P>] (last visited Feb. 10, 2024).

135. *See* COOPER ET AL., *supra* note 47, at 19.

new directors will receive training on their fiduciary duties and learn more about the company's structure, operations, finances, strategic plan, and risks. They will also meet with the company's senior management.<sup>136</sup> Because of the small number of participants, the orientation organizer—often the public company's secretary—can tailor the program to the needs of the new director. A one-time orientation is a good start, but it cannot possibly provide all of the information needed by first-time directors to fulfill their fiduciary duties. They will need ongoing education.

#### 4. *Public Company Boards Continue to Include Many Long-Serving Directors*

Once elected, most directors of public companies are renominated and continue to serve on the board of directors. Today, the average tenure of directors on a public company's board is approximately 7.8 years, with 27% of directors serving for more than ten years.<sup>137</sup> Although public companies have been under pressure to “re-fresh” their boards, most boards have resisted adopting term limits or mandatory retirement provisions which would lead to more board turnover. Therefore, it is safe to say that long-serving directors are here to stay.

Long-serving directors can add tremendous value to the board. Long-serving directors can accumulate extensive knowledge about the company's history, management, and past performance, which can be shared with the rest of the board. This institutional knowledge is an asset. However, the long-serving director's knowledge in other areas may have become stale during his tenure.<sup>138</sup> Consider a director who has served on a board for ten years. As discussed above, the board's oversight responsibilities have expanded tremendously in the last ten years.<sup>139</sup> A long-serving director may not be up to date on the latest challenges facing public company boards. This is especially a concern if the long-serving director has retired.<sup>140</sup> If the director is no longer actively working, then he may no longer be keeping current with industry trends and best practices. In short, without continuing education, the director's knowledge may have become stale.

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136. *Id.* at 20.

137. SPENCER STUART BOARD INDEX, *supra* note 121, at 26.

138. See, e.g., Joann S. Lublin, *For Older Board Members, the Pressure to Move On; Asset Managers, Activists Urge Companies to Adopt Director Tenure Policies*, WALL ST. J. (Dec. 23, 2014, 2:21 PM), <https://www.wsj.com/articles/for-older-board-members-the-pressure-to-move-on-1419362515> [<https://perma.cc/2CW4-UBFG>] (“[C]ritics say veteran board members often can't keep up with rapid changes in business.”). There are other important criticisms of longer-serving directors, including that their lengthy tenures negatively impact their ability to exercise independent judgment. See, e.g., Yaron Nili, *The “New Insiders”: Rethinking Independent Directors’ Tenure*, 68 HASTINGS L.J. 97, 144 (2016).

139. See *supra* Section V.A.

140. LARCKER & TAYAN, *supra* note 11, at 120 (noting that a retired director's “knowledge of industry dynamics and regulations is potentially outdated”).

## VI. RECOMMENDATIONS

*A. Public Companies Should Adopt Mandatory Continuing Education Policies for Directors*

The significant expansion in board responsibilities and the changes in board composition mean that director education is more important than ever before. However, most public companies do not currently require directors to engage in continuing education.<sup>141</sup> That needs to change. All public companies should expressly require their directors to engage in mandatory continuing education and should adopt formal mandatory continuing education policies.

The mandatory continuing education program should be targeted to address the board's needs, as well as the individual needs of each director. The size of the public company board—typically ten directors<sup>142</sup>—is small enough that the program can be readily customized to meet the needs of a specific board.

The nominating committee should be responsible for implementing and overseeing the public company's mandatory continuing education program. As discussed above,<sup>143</sup> the nominating committee's current responsibilities include ensuring that the board is composed of directors who collectively have the knowledge and skills needed to fulfill their fiduciary duties. The committee is also responsible for overseeing the evaluation of the board.<sup>144</sup> The nominating committee should already be aware of the board's knowledge gaps, as well as individual directors' knowledge gaps. Therefore, the nominating committee would be in the best position to create an effective education program that is targeted to its board's needs.<sup>145</sup>

The content of the continuing education should be determined by the nominating committee. Each year, the nominating committee should identify the areas in which the board needs education and then address those areas by designing an appropriate education program. A company's continuing education program should not be static. The nominating committee should regularly consider whether the board's need for education has changed during the year and react accordingly.

The involvement of the nominating committee will ensure that the continuing education received by the board is customized to the needs

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141. See *supra* Section IV.A.

142. See SPENCER STUART BOARD INDEX, *supra* note 121, at 25.

143. See *supra* Section I.E.

144. NYSE COMPANY MANUAL, *supra* note 31, § 303A.04(b)(i) (noting that the nominating committee is responsible for “oversee[ing] the evaluation of the board and management”).

145. Indeed, at most public companies with director education programs, the nominating committee is already responsible for continuing education for directors. See *supra* Section IV.H. The committee charter should be amended to add director education to its formal list of responsibilities.

of the directors. For example, the committee might determine that the entire board needs general education on a new or emerging issue—such as web3. Therefore, the committee might decide to retain a third-party provider to present a two-hour program at an upcoming board meeting. Similarly, the committee might determine that a particular director who will be joining the company's audit committee could benefit from additional training on the financial reporting process. The committee could arrange for a senior executive to work with the director. Or perhaps the committee could decide to implement regular "reboarding" programs for long-serving directors who might need to refresh their knowledge. The customized continuing education program will help ensure that the board, as a whole, has the knowledge it needs to meet its oversight responsibilities.

The nominating committee will also determine how much time should be devoted to director education. The time commitment is an important consideration. Directors are busy people. They have limited time to devote to board service. If a public company's continuing education requirements are too time-consuming, some directors may decide not to sit on that board. The nominating committee will help ensure that the continuing education program is not overly burdensome on directors. It will use its best judgment to design a program that addresses both the board's need for continuing education and the directors' busy schedules. The nominating committee should communicate the approximate time commitment to the directors, so that they are aware of what is expected of them.

A mandatory continuing education policy will not work if directors do not participate. Given that public companies seek individuals of high personal integrity to serve on their boards, there should not be many director "scofflaws" who deliberately refuse to attend continuing education. But directors are busy, and some may not prioritize continuing education. Therefore, companies will need to demonstrate that participation in continuing education is an important part of board service and conversely that a failure to participate has consequences. Keeping track of each director's participation is one way to do that. Making a director's participation in continuing education a factor in the annual board evaluation process is another.

In addition, the public company's commitment to mandatory continuing education for directors should be memorialized in a formal policy. At a minimum, the mandatory continuing education policy should:

- State that the directors are required to participate in continuing education as mandated by the board;
- Describe the company's general expectations regarding the amount of time a director will devote to board education each year;

- Identify the committee responsible for implementing the director education program;
- Provide that each director's adherence to the company's mandatory continuing education policy will be monitored; and
- Provide that the director's participation in continuing education will be part of the board evaluation process.

Mandatory continuing education for directors would not be necessary if directors had the requisite knowledge to do their jobs. However, according to two important surveys, directors of public companies are concerned that they do not. For example, according to a recent NACD Public Company Governance Survey of directors of public companies, only 64% of respondents believed that their board's understanding of cyber risk was strong enough to provide effective oversight.<sup>146</sup> Moreover, 39% of respondents identified continuing education as an area for improvement, and less than 50% agreed that the board allocated enough time to continuing education.<sup>147</sup>

Directors have similar concerns about their ESG knowledge. For example, according to PwC's most recent Annual Corporate Directors Survey, only 65% of the respondents believed that their board understands the internal processes and controls around ESG data collection, only 63% believed that their board understands their company's climate risk strategy, and only 56% believed that their board understands their company's carbon emissions.<sup>148</sup> The knowledge lapse was even more pronounced in smaller public companies.<sup>149</sup> Perhaps this is why 39% of respondents agreed that their board would be willing to institute mandatory continuing education for directors.<sup>150</sup>

Public companies may argue that it is not necessary to formally require directors to engage in continuing education if their board already voluntarily participates in continuing education. That may be true at some companies, but without a formal board policy, there is no assurance that directors will continue to do so. Moreover, a formal director continuing education policy signals to directors the importance of ongoing education. To the extent that public companies are already

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146. NAT'L ASS'N OF CORP. DIRS., NACD PUBLIC COMPANY GOVERNANCE SURVEY 20 (2020), <https://corpgov.law.harvard.edu/wp-content/uploads/2020/01/2019-2020-Public-Company-Survey.pdf> [<https://perma.cc/6WZ3-NY83>].

147. *Id.* at 35.

148. PWC, PWC'S 2022 ANNUAL CORPORATE DIRECTORS SURVEY: CHARTING THE COURSE THROUGH A CHANGING GOVERNANCE LANDSCAPE 15 (2022), <https://www.pwc.com/us/en/services/governance-insights-center/assets/pwc-2022-annual-corporate-directors-survey.pdf> [<https://perma.cc/W6BX-NJRD>].

149. For example, according to PwC's survey, while 77% of directors of large public companies believe that the board understands the company's climate risk/strategy, only 44% of directors at small companies share that belief. *Id.* at 22. Similarly, while 75% of directors of large public companies believe that the board understands the company's carbon emissions, only 35% of directors at small companies are confident of the board's understanding. *Id.*

150. *Id.* at 31.

providing continuing education to their directors, it is difficult to understand why they would be opposed to turning an informal practice into a formal policy.

Because the continuing education program will be customized for the board, the program avoids the typical criticisms of mandatory continuing education. First, a customized mandatory education program will not have the “check the box” problem that plagues so many mandatory education programs.

Second, the “you can lead a horse to water, but you can’t make it drink” criticism of mandatory continuing education is unlikely to apply to mandatory director education. Directors will be more likely to be attentive to an education program that is purposely designed to meet the board’s needs. Similarly, there will presumably be more director “buy-in” to an education program that is designed by a committee comprised of colleagues, as opposed to a licensing board. In addition, directors will be more likely to be attentive because their participation in director education programs would be part of the board evaluation process.

Finally, although there will be costs associated with a mandatory continuing education program, they will be relatively small and paid for by the public company rather than by each director.

*B. The SEC Should Require Public  
Companies to Disclose Information  
About Continuing Education for Directors*

As discussed above,<sup>151</sup> all public companies should adopt mandatory continuing education programs. Continuing education will help directors gain the knowledge they need to meet their oversight responsibilities. However, it seems unlikely that public companies will adopt these programs voluntarily. They are not doing it now, and there is no reason to think that they will voluntarily do so in the future.<sup>152</sup> A recent survey revealed that mandatory continuing education for directors is an especially divisive issue for boards, with directors of public companies split down the middle on the question.<sup>153</sup> Therefore, the SEC must become involved. The SEC should adopt rules requiring public companies to disclose in their proxy statements information about their continuing director education programs.

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151. See *supra* Section VI.A.

152. A recent survey by the NACD indicated that directors did not view director education as an important governance priority. NAT’L ASS’N OF CORP. DIRS., *supra* note 146, at 13.

153. PWC, *supra* note 148, at 31.

1. *Public Companies Should Disclose Whether They Require Directors to Engage in Mandatory Continuing Education*

First, the SEC should require public companies to disclose whether they require their directors to engage in mandatory continuing education each year, and, if not, why not. This “disclose or explain” rule will presumably encourage public companies to adopt mandatory director education policies.<sup>154</sup> After all, given the benefits of continuing education for directors, it is unlikely that a public company would want to explain why it chose not to require directors to participate in continuing education. It would look bad to investors.

This would not be the first time that the SEC has used a “disclose or explain” rule to encourage public companies to change their conduct. For example, the SEC requires public companies to disclose whether they have adopted a code of ethics that applies to CEOs and other senior officers. If not, the company must explain why it has not.<sup>155</sup> In addition, the SEC requires public companies to disclose whether their audit committee includes a “financial expert.” If not, the company must explain why it does not.<sup>156</sup> Public companies are also required to disclose whether they have a process for stockholders to communicate with the board. If not, the company must explain why it does not.<sup>157</sup> Adopting a disclose or explain approach would encourage public companies to adopt mandatory continuing education programs.

Of course, under this disclose or explain approach, some companies may still choose not to require directors to engage in ongoing education. The only way to ensure that all public companies adopt mandatory director continuing education policies would be if the SEC promulgated a rule directing public companies to do so. There are two problems with that approach. First, in general, corporate governance is not “one size fits all.” Experts agree that a particular governance practice that is best for one company may not be best for a different company.<sup>158</sup> Separating the CEO and Chairperson of the Board positions is a good example of this. A rule requiring the separation of the two positions could harm some companies. On the other hand, the disclose or explain approach allows a public company the freedom to choose the corporate governance practice that works best for it, even if it is not the practice favored by the SEC. Given the benefits of continuing education, it seems unlikely that a public company would be able to provide a legit-

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154. For a discussion of the SEC’s “disclose or explain” approach, see O’Hare, *supra* note 34, at 280-82.

155. 17 C.F.R. § 229.406(a) (2023).

156. *Id.* § 229.407(d)(5)(i)(C).

157. *Id.* § 229.407(f)(1).

158. *E.g.*, Dorothy S. Lund, *In Search of Good Corporate Governance*, 131 YALE L.J. F. 854, 865 (2022) (noting that “there is not much in corporate governance that lends itself to a one-size-fits-all approach”).

imate reason not to require it. However, the disclose or explain approach permits each public company to choose its own corporate governance practices.

Second, it is not entirely clear that the SEC has the authority to promulgate substantive rules that regulate corporate conduct.<sup>159</sup> On the other hand, there is no question that the SEC has the authority to promulgate rules requiring disclosure of corporate conduct, including a public company's corporate governance practices.<sup>160</sup> The disclose or explain approach avoids the possibility of litigation over the SEC's rulemaking authority.

## *2. Public Companies Should Disclose Information About the Continuing Director Education Provided to the Board*

In addition, the SEC should require all public companies—even those companies that choose not to require directors to engage in continuing education—to disclose in their proxy statements basic information about the continuing education received by their incumbent directors during the previous year.

The purpose of the proxy statement is to provide shareholders with the information they need to make informed voting decisions. As discussed above, according to SEC rules, the proxy statement must include specific information about each nominee's qualifications to serve on the board. However, the SEC does not currently require public companies to disclose any information about whether directors participated in continuing education programs. Shareholders, therefore, generally lack important information that would help them determine whether a nominee has kept current in the knowledge needed to oversee the company.

The SEC should correct this information deficiency by requiring public companies to describe the continuing education received by their board in the last year. Specifically, the SEC should require proxy statements to include:

- A brief description of the content of the continuing education provided to the directors during the previous year;
- The amount of time directors devoted to continuing education during the previous year; and

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159. See, e.g., Roberta S. Karmel, *Realizing the Dream of William O. Douglas—The Securities and Exchange Commission Takes Charge of Corporate Governance*, 30 DEL. J. CORP. L. 79, 82-86 (2005) (explaining the SEC's lack of authority to regulate the "internal affairs" of a corporation).

160. For example, Item 407 of Regulation S-K sets forth a lengthy list of corporate governance practices that must be disclosed by public companies, including information about the independence of company directors, board meetings and board committee meetings, board committees, shareholder communications, and board leadership. 17 C.F.R. § 229.407.



- The number of directors who participated in continuing education during the previous year.

There is another reason why the SEC should require public companies to include basic information about the continuing education received by their directors. Today, many public companies voluntarily include a summary of their best corporate governance practices in their proxy statements, and continuing director education is often included on this list.<sup>161</sup> However, these companies generally provide no details about the continuing director education that is highlighted in their proxy statements. For example, there is no information about the content of the continuing education, the amount of continuing education, or the number of directors who received continuing education. Therefore, it is impossible to determine whether the continuing education program is truly helping directors fulfill their fiduciary duties. If public companies choose to tout their continuing director education in their proxy statements, they should also provide basic information about the program so that investors can determine whether the continuing education is, in fact, a good corporate governance practice or merely window dressing.

This basic information would not be difficult or costly for public companies to provide. In fact, as discussed above, some public companies are already beginning to include this information in their proxy statements to signal their commitment to best practices.<sup>162</sup> For example, JPMorgan Chase & Co. stated in its 2022 proxy statement that “[o]ngoing education is provided through ‘deep dive’ presentations from [lines of business], discussions and presentations by subject matter experts and other opportunities, including events that provide client, employee and other perspectives that can have a significant impact on the Firm.”<sup>163</sup> It also provided some general information about the content of the continuing education provided to directors during the previous year, including

the Firm’s products, services and lines of business; cybersecurity and technology, including an update on the Firm’s cybersecurity modernization strategy and cyber threats landscape; diversity, equity and inclusion (“DEI”); ESG matters, including the Firm’s climate risk management framework; significant and emerging risks; and key laws, regulations and supervisory requirements applicable to the Firm.<sup>164</sup>

While this disclosure is a good start, JPMorgan Chase & Co. did not provide any information regarding how much continuing education the

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161. See *supra* Section IV.I.

162. *Id.*

163. JPMORGAN CHASE & CO., *supra* note 83, at 27.

164. *Id.*

board received. This information is necessary to determine whether the continuing education received by directors is actually helping them meet their board responsibilities.

*3. Public Companies Should Identify the Directors Who Participated in Continuing Education During the Previous Year*

Finally, the SEC should require companies to identify the directors who participated in continuing education during the previous year. Shareholders should know which directors are taking advantage of opportunities to keep current in their knowledge. The disclosure will also encourage directors to participate in continuing education.

Critics may argue that this rule is unseemly because it subjects directors to embarrassment. After all, by disclosing which directors participated in continuing education, the company is also identifying directors who did not. However, this is not persuasive. The SEC has already adopted a similar “shaming” rule. Specifically, public companies are required to disclose in their proxy statements the name of any director who did not attend 75% of board and board committee meetings.<sup>165</sup>

#### CONCLUSION

When individuals are entrusted with great responsibilities, they must keep their knowledge current so that they can meet those responsibilities. Today’s boards may not have the knowledge they need to effectively oversee public companies. Mandatory continuing education that is carefully tailored to the board’s needs, as well as to individual directors’ needs, is the solution. It is up to public companies, and the SEC, to make sure it happens.

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165. 17 C.F.R. § 229.407(b)(1).

APPENDIX: DIRECTOR EDUCATION PRACTICES  
LARGE CAP COMPANIES

Company	
<b>Alphabet (A and C)</b>	<b>Description of Director Education Programs in Corporate Governance Guidelines</b>
No express requirement, but implied.	<b>Is Orientation Required for New Directors?</b>
No; “encourage[d].”	<b>Is Continuing Education Required for Directors?</b>
Yes.	<b>Is Participation in Continuing Education Monitored?</b>
N&CG Committee.	<b>Who Is Responsible for Implementing Continuing Education Program?</b>
Outside director education program.	<b>What Kind of Continuing Education Program?</b>
Yes.	<b>Is Continuing Education Highlighted or Identified as a “Best Practice” in Proxy Statement?</b>
No.	<b>Does Company Have a Public Director Education Policy?</b>

	and effective Board. Accordingly, the Board encourages directors to participate in ongoing education, as well as participation in accredited director education programs. The Board will reimburse directors for expenses incurred in connection with these education programs.”							
<b>Amazon</b>	No provision.	No.	No.	No.	Unknown.	Unknown.	No.	No.
<b>Apple</b>	“The Corporation will provide new directors with materials, briefings and additional educational opportunities to permit them to become familiar with the Corporation and to enable them to perform their duties. Directors also are encouraged to visit the Corporation’s facilities and meet with Corporation employees throughout their tenure on the Board. In addition, directors are encouraged	No express requirement, but implied.	No; “encouraged.”	No.	Unknown.	Outside director education program.	Yes.	No.

	to attend accredited director education programs at the Corporation's expense."							
AT&T	<p>"Management, working with the Governance and Policy Committee, will provide an orientation process for new Directors, including the Directors' Reference manual and other background material on AT&amp;T's operations and business plans, and meetings with senior management. Periodically, management will prepare additional educational sessions for Directors on matters relevant to AT&amp;T's operations and plans. AT&amp;T shall reimburse Directors for reasonable expenses relating to educational courses and memberships in associations that permit access to educational materials, in each case that reasonably relate to their duties as Directors."</p>	No express requirement, but implied.	No.	No.	CG Committee.	Mix of internal programs and outside programs.	No.	No.

<b>Chipotle Mexican Grill</b>	<p>“New Directors will participate in an orientation program, within a reasonable period of time after their election as director. The orientation program will address the Company’s operations, performance, strategic plans, and corporate governance practices and the role of the Board and will include introductions to members of the Company’s senior management and their respective responsibilities and an overview of the usual and customary level of oversight expected of directors. All Directors are encouraged to participate in continuing education programs</p>	Yes.	No; “encouraged.”	No.	Unknown.	Outside director education program.	No.	No.
<b>Berkshire Hathaway (Class B)</b>	<p>“All new directors receive an orientation from the Chief Executive Officer and are expected to maintain the necessary level of expertise to perform his or her responsibilities as a director. The Company does not maintain any formal orientation or continuing education programs.”</p>	No express requirement, but implied.	No.	No.	Unknown.	Unknown.	No.	No.

	relating to the responsibilities of directors or members of committees of the board of publicly traded companies, and the Company will pay the reasonable expenses of attendance by a Director at one such program per year.”							
<b>Duke Energy Corporation</b>	“New directors will receive a comprehensive package of orientation materials. Senior managers and other appropriate personnel and outside advisors will brief new directors on the Corporation and the industry, including the Corporation’s strategic plans, internal control procedures, compliance programs, code of ethics and related policies, management and internal and independent auditors. Directors will be encouraged to take advantage of field visits to the Corporation’s facilities. . . . Directors are encouraged to take advantage of continuing education opportunities that will enhance their ability to fulfill their responsibilities.”	No express requirement, but implied.	No; “encouraged.”	No.	Unknown.	Unknown.	No.	No.

<b>Freeport-McMoRan</b>	<p>“All new directors will receive an orientation package consisting of the Company’s Certificate of Incorporation and By-Laws, the Principles of Business Conduct, these Corporate Governance Guidelines, all SEC filings for the current and preceding calendar year, and any other pertinent information. Each new director will meet with the Chairman of the Board, the Lead Independent Director (if applicable), the Chief Executive Officer and any other officers as determined by the Chairman of the Board to be briefed on the Company’s strategic plans, key policies and practices,</p>	<b>Etsy</b>	<p>“Etsy assists new directors in learning about Etsy and its business. Etsy also encourages directors to participate in relevant continuing education programs and will reimburse directors for reasonable expenses.”</p>
No express requirement, but implied.	No.	No; “encourage[d].”	No; “encourage[d].”
Yes.		N&CG Committee.	No.
Mix of internal programs and outside programs.		Outside director education program.	N&CG Committee.
Yes.			Outside director education program.
No.			No.



<p>compliance programs and significant operational, financial, accounting, and risk management matters. The Company encourages each director to attend, at the Company's expense, director continuing education programs, including on subjects relevant to the duties of a director, corporate governance, best board practices, the mining industry, risk management and ethics. Periodically, directors will be invited or may request to visit certain of the Company's significant mining and other operating sites, and management will prepare educational sessions for the directors relevant to the Company's operations and plans to understand better the Company's business and culture. The Governance Committee will monitor and evaluate the orientation and training needs of directors and make recommendations to the Board where appropriate."</p>							
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<b>JPMorgan Chase &amp; Co.</b>	<p>“At such time as a director joins the Board, the Board and the Chief Executive Officer will provide appropriate orientation for the director, including arrangement of meetings with management. The Board considers it desirable that directors participate in continuing education opportunities and considers such participation an appropriate expense to be reimbursed by the Firm.”</p>	No express requirement, but implied.	No; “desirable.”	No.	The Board and the CEO.	Outside director education program.	Yes.	No.
<b>Johnson &amp; Johnson</b>	<p>“The Company has a comprehensive orientation program for all new Non-Employee Directors. All new Directors receive extensive written materials and meet in one-on-one sessions with members of senior management to discuss the Company’s business segments, strategic plans, financial statements, significant financial, accounting and legal issues, compliance programs and business conduct policies. All Directors can receive periodic updates throughout their tenure.”</p>	No express requirement, but implied.	No.	No.	N&CG Committee.	Unknown.	No.	No.

<b>Microsoft</b>	<p>“The Governance and Nominating Committee and management are responsible for director orientation programs and for director continuing education programs to assist directors in maintaining skills necessary or appropriate to perform their responsibilities.”</p> <p>“Orientation programs are designed to familiarize new directors with the Company’s businesses, strategies, and policies, and to assist new directors in developing Company and industry knowledge to optimize their service on the Board.”</p> <p>“Regular continuing education programs enhance the skills and knowledge directors use to perform their responsibilities. These programs may include internally developed programs, programs presented by third parties, and financial and administrative support to attend qualifying academic or other independent programs.”</p>	No express requirement.	No express requirement.	No.	CG&N Committee.	Mix of internal programs and outside programs.	Yes.	No.
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	[Also includes statement that “In addition, the Board holds regular educational meetings on Company strategy and other topics.”]							
<b>Mohawk Industries</b>	“New directors are provided with a complete orientation process, which includes comprehensive information regarding the Company’s business and operations, information regarding the industry in which the Company operates and other background material, meetings with senior management and visits to Company facilities. As a part of the Company’s continuing education efforts, supplemental information is provided to directors from time to time and meetings of the Board are held from time to time in alternate locations to provide the directors an opportunity to become familiar with additional Company facilities.”	No express requirement, but implied.	Yes.	No.	Unknown.	Internal.	No.	No.

<b>PepsiCo</b>	<p>“The Board shall implement and maintain an orientation program for newly elected Directors and shall periodically offer continuing education presentations to Board members.”</p> <p>“Directors are required to continue educating themselves with respect to topics related to the Corporation’s business, including international markets, accounting and finance, leadership, risk assessment, industry practices, general management, sustainability,</p>	No express requirement, but implied.	Yes.	No.	The Board.	Unknown.	Yes.	No.
<b>Nvidia</b>	<p>“Each director is expected to participate in continuing education to maintain the necessary level of expertise to perform his or her responsibilities. The NCGC and the General Counsel are responsible for administering or approving eligible continuing education programs, which may include a mix of in-house and third-party programs. The Company will pay the out-of-pocket costs of attendance for any director.”</p>	No.	No; “expected.”	No.	N&CG Committee.	Mix of internal programs and outside programs.	No.	No.

	and strategic planning.”							
<b>Southwest Airlines</b>	<p>“New members of the Board will be provided with the necessary materials regarding the Company’s operations and performance to understand the Company’s business. The Board of Directors will have ongoing contact with senior executive and other members of management, for example, through yearly Board retreats, visits to Company facilities, and management participation in Board meetings. The Board shall receive an annual presentation by management of the Company’s long-term strategic plan. In addition, the Board shall receive periodic briefings from the Company’s independent auditors, its Finance executives, its Chief Legal Officer, and outside experts regarding, among other matters, changes in accounting regulations, other regulatory requirements, and the</p>	No express requirement, but implied.	Yes.	No.	Unknown.	Mix of internal programs and outside programs.	No.	No.

	<p>laws applicable to the responsibilities of the Board. Board members are encouraged to attend significant Company events. Board members are also encouraged to take advantage of materials and seminars provided by experts in the fields of accounting and the law, to the extent applicable to their responsibilities as Board members. Members of the Board are provided flight benefits to enable them to monitor the Company's service levels and to interact with Employees and Customers. Directors may also visit other facilities of the Company as they desire. Board members will have access to press releases, analyst reports, and other news reports regarding the Company and its prospects."</p>							
<p><b>Tesla</b></p>	<p>"Tesla provides an orientation program for new directors that includes written materials, oral presentations, and meetings with senior members of management. The orientation program is</p>	<p>No express requirement, but implied.</p>	<p>No; "encourage[d]."</p>	<p>No.</p>	<p>N&amp;CG Committee.</p>	<p>Outside director education program.</p>	<p>No.</p>	<p>No.</p>

	<p>designed to familiarize new directors with Tesla’s business and strategy. The Board believes that ongoing education is important for maintaining a current and effective Board. Accordingly, the Board encourages directors to participate in ongoing education, as well as participation in accredited director education programs.”</p>							
<p><b>Tractor Supply Co.</b></p>	<p>“An orientation program has been developed for new Directors which includes comprehensive information about the Company’s business and operations; general information about the Board and its Committees, including a summary of Director compensation and benefits; and a review of Director duties and responsibilities.”</p>	<p>No express requirement, but implied.</p>	<p>No.</p>	<p>No.</p>	<p>N&amp;CG Committee.</p>	<p>Unknown.</p>	<p>Yes.</p>	<p>No.</p>



<p><b>UnitedHealth Group</b></p>	<p>“The Company will provide an orientation process for new directors, including extensive background material on the Company and its business and meetings with key management. Periodically, management will prepare additional educational materials for directors on matters relevant to the Company and its business. In addition, each director is expected to maintain the necessary level of expertise to perform his or her responsibilities as a director. Each director is expected to receive board-related continuing education of an agreed-upon amount. The Board may, from time to time, agree on in-boardroom education programs to focus on specific needs of the Board. The Company will reimburse directors for reasonable expenses incurred in connection with their attendance at director education programs.”</p>	<p>No express requirement, but implied.</p>	<p>No; “expected.”</p>	<p>No.</p>	<p>CG Committee.</p>	<p>Mix of internal programs and outside programs.</p>	<p>No.</p>	<p>No.</p>
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<b>Zebra Technologies</b>	<p>“Zebra will provide appropriate orientation programs for new directors, which should be designed both to familiarize new directors with Zebra’s business and to assist them in developing and maintaining the knowledge necessary and appropriate for the performance of their responsibilities. Zebra also supports, strongly encourages and reimburses the costs of participation in continuing education programs for directors. The Nominating and Governance Committee oversees the onboarding of new directors and continuing director education.”</p>	No express requirement, but implied.	No; “encourage[d].”	No.	N&CG Committee.	Outside director education program.	Yes.	No.
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APPENDIX: DIRECTOR EDUCATION PRACTICES  
MID CAP COMPANIES

Company	
<b>Alleghany Corp. (NY)</b>	<b>Description of Director Education Programs in Corporate Governance Guidelines</b>
No express requirement.	<b>Is Orientation Required for New Directors?</b>
No express requirement.	<b>Is Continuing Education Required for Directors?</b>
No.	<b>Is Participation in Continuing Education Monitored?</b>
ESG Committee.	<b>Who Is Responsible for Implementing Continuing Education Program?</b>
Mix of internal programs and outside programs.	<b>What Kind of Continuing Education Program?</b>
No.	<b>Is Continuing Education Highlighted or Identified as a “Best Practice” in Proxy Statement?</b>
No.	<b>Does Company Have a Public Director Education Policy?</b>

	<p>applicable laws and regulations. Alleghany will reimburse directors for the reasonable cost of attending director education programs or seminars that the director and Alleghany believe will be beneficial to such director's service on the Board and its Committees."</p>									
<p><b>Brighthouse Financial</b></p>	<p>"The Company will provide all new directors with an orientation program in connection with joining the Board. Orientation will include presentations by senior management to familiarize the directors with, among other things, the Company's business, operations, financial condition, risk management, and governance. Both new and existing directors are encouraged to attend continuing education programs sponsored by third parties to develop and enhance their skills and to assist them in the discharge of their responsibilities and duties."</p>	<p>No express requirement, but implied.</p>	<p>No; "encouraged."</p>	<p>No.</p>	<p>N&amp;CG Committee.</p>	<p>Outside director education program.</p>	<p>Yes.</p>	<p>No.</p>		

<b>Curtiss-Wright</b>	<p>“The Board shall develop materials to provide orientation to new Directors on their rights and obligations as Directors, as well as regarding the finances, operations, and strategic plans of the Company. In addition, each Director is expected to participate in continuing education on the rights and obligations of directors and/or the operations of the boards of directors of public companies.”</p>	No express requirement, but implied.	No; “expected.”	No.	The Board.	Unknown.	Yes.	No.
<b>Carlisle Companies</b>	<p>“All new directors are expected to participate in an Orientation Program, which should be conducted within three months from the time the new director joins the Board. This orientation will include presentations by senior management to familiarize the new director with the Company’s strategic plans, its significant financial, accounting and risk management issues, its compliance programs, its principal officers as well as this Statement. All continuing directors are also invited to attend the orientation. The Company also shall provide directors with ongoing education on issues facing the Company and on subjects that would assist the directors in discharging their duties.”</p>	No; “expected.”	No.	No.	Unknown.	Internal.	No.	No.

<p><b>Essential Utilities</b></p>	<p>“The Board . . . is responsible for . . . the development of an educational program for new Board members that includes meetings with key management [and] the development of continuing education programs for existing directors designed to improve their ability to perform their duties . . . .”</p>	<p>No express requirement.</p>	<p>No express requirement.</p>	<p>No.</p>	<p>The Board.</p>	<p>Unknown.</p>	<p>Yes.</p>	<p>No.</p>
<p><b>Fair Isaac &amp; Co.</b></p>	<p>“Each new director, with the Company’s assistance, is expected to become familiar with the Company within a reasonable period of time after joining the Board. The Company has an orientation process for new directors that includes orientation materials and meetings with senior management to familiarize new directors with the Company’s strategic plans, its significant financial, accounting and risk management issues, its compliance programs, its Code of Business Conduct and Ethics, its principal officers, its internal and independent auditors, and its corporate governance practices. Incumbent directors are expected to attend continuing education courses with respect to corporate governance and other issues germane to Board service.”</p>	<p>No; “expected.”</p>	<p>No; “expected.”</p>	<p>No.</p>	<p>Unknown.</p>	<p>Outside director education program.</p>	<p>No.</p>	<p>No.</p>

<b>Fluor</b>	<p>“New directors are required to participate in the Company’s director orientation process, which includes briefings on the extensive materials contained in the Company’s Director Manual, and meetings with key management from operations and other functional areas such as finance, legal, human resources and compliance. The Company encourages its directors to participate in (and the Company reimburses reasonable costs relating to) continuing education programs to assist them in performing their Board of Directors responsibilities.”</p>	Yes.	No; “encourage[d].”	No.	N&CG Committee.	Outside director education program.	No.	No.
<b>First Horizon</b>	<p>“Management, working with the Board, will provide an orientation process for new directors, including background material on the Company, its business plan and its risk profile, and meetings with senior management. Periodically, management should prepare additional materials or educational sessions for the directors on matters relevant to the Company, its business plan and risk profile and provide information on educational opportunities available from third parties.”</p>	No express requirement, but implied.	No.	No. [but refers to Statement of Expectations of Directors]	Unknown.	Mix of internal programs and outside programs.	No.	No.

<b>LivaNova</b>	<p>“The Board will take such measures as it deems appropriate to ensure that its members may act on a fully informed basis. Each new Board member shall be provided with information regarding, and the opportunity to, fully review the Company’s business, personnel and operations in conjunction with accepting a seat on the Board. In addition, the officers of the Company, as well as the Board, shall take steps to ensure that Board members remain fully informed as to the operations of the Company, as well as their duties and</p>	No express requirement, but implied.	No; “encouraged.”	No.	N&CG Committee.	Mix of internal programs and outside programs.	No.	Yes, but not publicly disclosed. [CGGs refer to it]
<b>Ingredient</b>	<p>“Each new Director shall be provided with materials on the Company, meet with key management and visit one or more Company facilities to assist the new Director in becoming familiar with the Company’s business and organization. All Directors are encouraged to visit Company facilities and attend director continuing education programs, including those the Company may from time to time suggest, arrange or present. The fees for such programs and other reasonable expenses, including travel, shall be reimbursed by the Company.”</p>	No express requirement, but implied.	No; “encouraged.”	No.	N&CG Committee.	Mix of internal programs and outside programs.	No.	No.



	responsibilities as members of the Board. This includes periodic visits to Company facilities and events. The Board also has regular presentations on continuing education matters and directors are encouraged to attend continuing education seminars provided by third party providers. The Company also has a director continuing education policy which is reviewed periodically.”							
<b>NuVasive</b>	“Each newly elected director will work with the Company’s General Counsel to learn about the duties and responsibilities of a director and the functions and operations of the Board and its committees. Further, directors are encouraged to periodically attend seminars or conferences regarding directors’ legal duties, responsibilities and continuing education topics.”	Yes.	No; “encouraged.”	No.	Unknown.	Outside director education program.	No.	No.
<b>Range Resources</b>	“New Directors will be provided with appropriate information to familiarize them with the Company and its operations. Directors will receive appropriate information to assist them in the performance of their duties as directors and committee members, as applicable, including, at a minimum, what is necessary to comply with New	No express requirement, but implied.	No.	No.	Unknown.	Unknown.	No.	No.

	York Stock Exchange listing standards and regulatory requirements.”						
<b>Reliance Steel &amp; Aluminum</b>	“All new directors are expected to participate in the Corporation’s director orientation program, which should be conducted as soon as reasonably practicable. This orientation will include presentations by members of senior management, including the General Counsel, to familiarize new directors with the Corporation’s business and strategic plans, its significant financial, accounting and risk management issues, its compliance programs, its Code of Conduct, and its corporate governance documents. All directors are encouraged to participate in continuing director education.”	No; “expected.”	No; “encouraged.”	No.	N&CG Committee.	Unknown.	No. No.
<b>Service Corporation International</b>	“The Chair of the Board is responsible for the implementation of director orientation and continuing education at SCI. The Chair works in conjunction with the Nominating and Corporate Governance Committee on these matters. SCI will develop and regularly review a formal orientation program for new Board members that will include formal and informal sessions with other	No express requirement.	No express requirement.	No.	Chair of the Board and N&CG Committee.	Mix of internal programs and outside programs.	Yes. No.

<p>directors and senior SCI executives and attendance at meetings of committees of which the newly elected director is not a member, so as to gain familiarity with the work of these Board committees and the issues they are addressing. The goal of SCI's orientation program will be to integrate new directors to the Board so that they can quickly become sufficiently knowledgeable about SCI to contribute meaningfully to Board discussions and decision-making. The focus of continuing education for SCI directors will be on practicality—developing educational sessions that directors find meaningful and useful. These may range from educational sessions specific to issues confronting SCI and its industry to sessions covering corporate governance trends and issues. Consideration will be given to the development of a program of Board member site visits, whereby SCI directors would be requested to visit one or more SCI facilities annually either independently or in teams. In addition, the Nominating and Corporate Governance Committee will encourage directors to</p>											
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	attend courses and educational programs that are offered by various universities, institutes etc. and will, upon request, make recommendations on continuing education programs.”						
<b>STAAR Surgical</b>	“To further its policy of having major decisions made by the Board as a whole, the Company intends to offer orientation and continuing education process for Board members, which may include materials, meetings with key management and visits to Company facilities.”	No.	No.	Yes.	Unknown.	Internal.	No. No.
<b>Steel Dynamics</b>	“The company shall encourage its directors to take advantage of and to participate in educational opportunities in the areas of corporate governance, financial reporting, executive compensation, sustainability topics, and other areas of critical knowledge to enhance each Board member’s effectiveness.”	No.	No; “encourage[d].”	No.	Unknown.	Unknown.	No. No.
<b>Targa Resources</b>	“Each new director should participate in an orientation program, which should be conducted promptly after the director’s initial election or appointment. This orientation will include presentations by senior management to familiarize new directors with the Company’s operations, its significant	No; “should.”	No; “appropriate.”	No.	Unknown.	Outside director education program.	No. No.

	<p>financial, accounting and risk management issues, its compliance programs, the Targa Resources Code, its principal officers, and its internal and independent auditors. Other directors are also welcome to attend any of these orientation programs.”</p> <p>“The Board believes it is appropriate for directors to have access to educational programs related to their duties as directors on an ongoing basis to enable them to better perform their duties and to recognize and deal appropriately with issues that arise. The Company will provide appropriate funding for any such program in which a director wishes to participate.”</p>										
<p><b>Travel + Leisure Co.</b></p>	<p>“The Corporate Governance Committee will provide a complete orientation process for new Directors that includes background material, meetings with senior management and visits to Company facilities. The Board recognizes the importance of continuing education for its Directors and is committed to provide such education in order to improve both Board and Committee performance.”</p>	<p>No express requirement, but implied.</p>	<p>No; “committed to provide.”</p>	<p>No.</p>	<p>CG Committee.</p>	<p>Unknown.</p>	<p>No.</p>	<p>No.</p>	<p>No.</p>	<p>No.</p>	<p>No.</p>

<p><b>Yeti Holdings</b></p> <p>“The Nominating and Governance Committee will establish and periodically evaluate an orientation program for new directors and a continuing education program for existing directors. Such programs may include presentations by appropriate executives and opportunities for directors to visit the Company’s principal facilities in order to provide greater understanding of the Company’s business and operations. In addition, the Nominating and Governance Committee may arrange for directors of the Company to attend outside educational programs pertaining to the directors’ responsibilities.”</p>	<p><b>United Therapeutics</b></p> <p>“The Board encourages directors to participate in education programs to assist them in performing their responsibilities as directors.”</p>
No express requirement.	No; “encourage[d].”
No.	No; “encourage[d].”
No.	No.
N&CG Committee.	N&CG Committee.
Mix of internal programs and outside programs.	Outside director education program.
No.	Yes.
No.	No.

APPENDIX: DIRECTOR EDUCATION PRACTICES  
SMALL CAP COMPANIES

<b>Agree Realty</b>	“New directors will be encouraged to participate in orientation or education programs developed by the Nominating & Governance Committee.”	<b>Company</b>	
No; “encouraged.”		<b>Description of Director Education Programs in Corporate Governance Guidelines</b>	
No.		<b>Is Orientation Required for New Directors?</b>	
No.		<b>Is Continuing Education Required for Directors?</b>	
No.		<b>Is Participation in Continuing Education Monitored?</b>	
Unknown.		<b>Who Is Responsible for Implementing Continuing Education Program?</b>	
Internal.		<b>What Kind of Continuing Education Program?</b>	
No.		<b>Is Continuing Education Highlighted or Identified as a “Best Practice” in Proxy Statement?</b>	
No.		<b>Does Company Have a Public Director Education Policy?</b>	

<b>Asbury Automotive Group</b>	“Asbury provides an orientation program for new Directors to acquaint them with Asbury’s business, strategic plans, management team and internal and independent auditors. Asbury encourages its Directors to participate in continuing education programs to assist them in maintaining the necessary level of expertise to perform their responsibilities as a Director.”
<b>AMN Healthcare Services</b>	“The Board and the Company have a complete orientation process for new directors that includes background material, meetings with executive management and visits to the Company’s headquarters. In addition, from time to time on a continuing basis, all members of the Board shall receive additional materials, briefings, and educational opportunities to enable them to remain current with matters within their purview.”
No express requirement, but implied.	No express requirement, but implied.
No; “encourage[d].”	No.
No.	No.
G&NC Committee.	CG Committee.
Unknown.	Internal.
No.	Yes.
No.	No.



Chico's FAS	<p>“New directors will receive a comprehensive orientation from appropriate members of management regarding the Company’s business and operations within a reasonable period of time after their election or appointment as a director. This orientation will include provision of Company governance and financial documents, meetings with key management, visits to the National Store Support Center and to stores, as appropriate. Other directors may attend any such orientation sessions.”</p> <p>“Board members are encouraged to stay informed concerning developments and best practices in corporate governance and board responsibilities. In furtherance of this goal, the Company reimburses Board members for the reasonable costs of attending one program or conference per year, including related travel and other out-of-pocket expenses in accordance with the Board travel reimbursement policy, set forth herein.”</p>	No express requirement, but implied.	No; “encouraged.”	No.	Unknown.	Outside director education program.	No.	No.
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<p><b>Ellington Financial</b></p>	<p>“All new directors must participate in the Company’s Orientation Program (the ‘Orientation Program’), which should be conducted within two months of the first annual meeting at which new directors are elected. This orientation will include presentations by senior management to familiarize new directors with the Company’s strategic plans, its significant financial, accounting and risk management issues, its compliance programs, these Corporate Governance Guidelines, its Code of Business Conduct and Ethics, its principal officers and its internal and independent auditors. In addition, the Orientation Program will include visits to the Company’s executive offices, to the extent practicable. All other directors are also invited to attend the Orientation Program. In addition, all directors should receive annual director education in subjects relevant to the duties of a director, including the study of corporate governance best practices or ethics. This education may be as a result of a program planned by the Company or by the director attending a pre-approved seminar, with all expenses paid by the Company.”</p>	<p>Yes.</p>	<p>No; “should.”</p>	<p>No.</p>	<p>Unknown.</p>	<p>Mix of internal programs and outside programs.</p>	<p>No.</p>	<p>No.</p>
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<p><b>Ex/Service Holdings</b></p>	<p>“All new directors are required to participate in the Company’s Orientation Program, which should be conducted as soon as reasonably practicable after the new director is elected. The Company has developed a comprehensive orientation program, which includes site visits and presentations by senior management to familiarize new directors with the Company’s business and strategic plans, its significant financial, accounting and risk management issues, its compliance programs, its Code of Conduct and Ethics, its principal officers, and its internal and independent auditors. The Nominating and Governance Committee, with assistance from the Lead Director, or in the Lead Director’s absence, the Chairman of the Board, as requested by the Chair of the Nominating and Governance Committee, will oversee orientation programs for new directors and continuing education programs for all directors and encourage participation by all directors in director education courses every few years. The Company encourages director continuing education, including providing directors with information on director education programs. The Company will reimburse reasonable expenses incurred by a director in attending such</p>	<p>Yes.</p>	<p>No; “encourage [d].”</p>	<p>No.</p>	<p>N&amp;G Committee.</p>	<p>Outside director education program.</p>	<p>No.</p>	<p>No.</p>
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	<p>programs relevant to his or her duties as a director of the Company.”</p>							
<b>Exponent</b>	<p>“The Company’s management is responsible for new director orientation programs. The orientation programs are designed to familiarize new directors with the Company’s businesses, strategies and challenges.”</p>	<p>No express requirement, but implied.</p>	<p>No.</p>	<p>No.</p>	<p>Unknown.</p>	<p>Unknown.</p>	<p>No.</p>	<p>No.</p>
<b>Green Plains</b>	<p>“The Board considers it desirable for directors to participate in continuing education opportunities. The Nominating and Governance Committee is responsible for developing and evaluating an orientation and continuing education program for directors, and for making appropriate recommendations for final Board action regarding this program.”</p>	<p>No.</p>	<p>No; “desirable.”</p>	<p>No.</p>	<p>N&amp;G Committee.</p>	<p>Internal.</p>	<p>No.</p>	<p>No.</p>
<b>Helmerich &amp; Payne</b>	<p>“Each new Director must participate in the Company’s orientation program, which should be conducted within two months after a Director is first elected to the Board. This orientation will include familiarizing new Directors with the Company’s strategic plans, its significant financial, accounting and risk management issues, its compliance programs, its Code of Ethics, its principal officers, and its internal and independent auditors. The Company may, from time to time, offer continuing education programs to assist the</p>	<p>Yes.</p>	<p>No.</p>	<p>No.</p>	<p>N&amp;CG Committee.</p>	<p>Internal.</p>	<p>No.</p>	<p>No.</p>

	Directors in maintaining the level of expertise necessary to fulfill his or her responsibilities as a Director.”						
<b>Kaiser Aluminum</b>	“The Company shall establish and periodically review an orientation program for new directors that includes presentations by senior management and presentations regarding the Corporate Governance Guidelines, Code of Business Conduct and Ethics, the Company’s Securities Trading Policy and the Company’s Section 16 Policy. All directors shall also be invited to participate in the orientation program. Periodically, the Company shall provide opportunities for directors to visit the Company’s principal facilities in order to provide greater understanding of the Company’s business and operations.”	No express requirement, but implied.	No; “shall provide opportunities.”	No.	Unknown.	Internal.	No. No.
<b>Lantheus Holdings</b>	“The Board has delegated to the Nominating and Corporate Governance Committee the task of designing, with Company management, an appropriate orientation program for new directors that includes background material, meetings with senior management and visits to Company facilities. The Nominating and Corporate Governance Committee also explores and makes available continuing education opportunities for directors, from time to time.”	No express requirement, but implied.	No.	No.	N&CG Committee.	Internal.	No. No.

<p><b>NBT Bancorp</b></p>	<p>“The Chairman, Chief Executive Officer, and the Corporate Secretary, under the guidance and direction of the Nominating and Corporate Governance Committee, shall conduct orientation sessions with new directors. These orientations will include, at a minimum, a review of the role of the Board of Directors, of the current business plan, pertinent sections of regulatory guidelines on oversight of the Board, the Code of Business Conduct and Ethics, the Corporate Governance Guidelines, Bylaws of the Company and the Bank, the charters adopted for each Committee and the Company’s Insider Trading Policy. Also reviewed are the Company’s annual report, Form 10-K, and most recent proxy statement. The Company shall endeavor to make available to the directors educational opportunities pertinent to their service as directors, to enable them to better perform their duties and responsibilities and recognize and deal with the varied issues that might arise during their tenure as directors.”</p>	<p>Yes.</p>	<p>No; “shall endeavor to make available.”</p>	<p>No.</p>	<p>N&amp;CG Committee.</p>	<p>Internal.</p>	<p>No.</p>	<p>No.</p>
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Prestige Consumer Healthcare	<p>“Upon election to the Board by stockholders or appointment by any third party having the right to appoint directors to the Company’s Board, new directors participate in an orientation session designed jointly by the Nominating and Corporate Governance Committee, the Chief Executive Officer and the Company’s senior management.”</p> <p>“Management shall make presentations to or arrange educational programs for the Board on different aspects of the business of the Company, which may include business strategy, risk management, financial reporting, products and services, industry trends and developments, corporate governance and other relevant topics. Such presentations or sessions may be provided by management on its own initiative or at the request of, or in</p>	No express requirement, but implied.	Yes.	No.	N&CG Committee.	Mix of internal programs and outside programs.	No.	No.
Omnicell	<p>“The Corporate Governance Committee will work with management to develop an orientation process for directors that include background material on the Company’s policies and procedures, meetings with senior management and visits to Company facilities. The Company may, from time to time, offer continuing education programs to assist the directors in maintaining the level of expertise to perform his or her duties as a director.”</p>	No express requirement, but implied.	No.	No.	CG Committee.	Internal.	No.	No.

	<p>conjunction with, the Nominating and Corporate Governance Committee. Directors are also encouraged to attend, on a regular basis, any other available educational opportunities that would further their understanding of the business of the Company and enhance their performance on the Board. The Company will reimburse directors for reasonable expenses incurred in connection with these education programs, provided that prior approval for such expenses has been received from the Chairman of the Nominating and Corporate Governance Committee or the Company’s Chief Executive Officer or General Counsel. Directors who attend education programs are encouraged to share the program materials and learning with other members of the Board.”</p>							
<p><b>Rogers</b></p>	<p>“The CEO, in consultation with such other members of the Board or management as he or she deems appropriate or such persons as otherwise directed by the Board or the Nominating, Governance &amp; Sustainability Committee, shall be responsible for providing an orientation for new Directors and for periodically providing materials or briefing sessions or otherwise making available training opportunities for Directors on subjects that would assist them in discharging</p>	<p>Yes.</p>	<p>No.</p>	<p>No.</p>	<p>The CEO, Board, and NG&amp;S Committee.</p>	<p>Unknown.</p>	<p>No.</p>	<p>Committee Charter refers to a policy, but it is not public.</p>



	<p>their duties. Each new Director shall complete an orientation program as soon as practical after election to the Board. The orientation program will include presentations by management designed to familiarize the new Director with the Company's business and strategic plans, key policies and practices, principal officers and management structure, auditing and compliance processes, its code of business conduct and ethics, its related party transactions policy, or similar documents."</p>								
<p><b>Southwestern Energy Co.</b></p>	<p>"New directors shall participate in an orientation program. The agenda for the orientation program shall be determined by the Chairman of the Board, in consultation with the Chief Executive Officer, the Chief Financial Officer, the General Counsel and (if there is one) the Lead Director, who may consult as appropriate with the Chairmen of the standing Committees of the Board of Directors. The orientation program shall address the Company's strategic plans, significant risk exposures, compliance programs (including its Business Conduct Guidelines) and may include presentations by the Company's executive management, internal auditors and independent auditors, as well as one or more visits to the Company's headquarters or</p>	<p>Yes.</p>	<p>No; "encourage[d]."</p>	<p>No.</p>	<p>Chairman of the Board.</p>	<p>Outside director education program.</p>	<p>No.</p>	<p>No.</p>	

	<p>other operating sites or facilities. All other directors shall also be invited to attend each orientation program. The Chairman of the Board of Directors shall encourage directors to participate in continuing education programs by recommending relevant programs for their attendance, and the Company shall pay the reasonable expenses of attendance by a director at one such program per year.”</p>						
<p><b>SpartanNash</b></p>	<p>“The Company shall provide each new director an orientation with respect to his or her duties as a director and the business of and financial information relating to the Company. In addition, each new director and each new member of any Board Committee is expected to cooperate in fulfilling any orientation guidelines that the Nominating and Corporate Governance Committee may recommend generally or on an ad hoc basis to help assure that the director has the necessary skills to perform his or her responsibilities as a director, new member of any Board Committee, or both. Each director is expected also to cooperate in fulfilling all applicable continuing education guidelines established and updated by the Nominating and Corporate Governance Committee.”</p>	<p>Yes.</p>	<p>No, “expected.”</p>	<p>No.</p>	<p>N&amp;CG Committee.</p>	<p>Unknown.</p>	<p>Yes Yes; CGGs refer to continuing education guidelines, but they are not public.</p>

<b>Vonage Holdings</b>	<p>“Director Orientation. The Board and the Company's management shall develop an appropriate orientation program for new directors that includes background materials, management presentations, meetings with senior management, and visits to Company facilities (as appropriate. Continuing Education. Each Director is expected to be involved in continuing director education on an ongoing basis to enable him or her to better perform his or her duties and to recognize and</p>	No express requirement, but implied.	No; “expected.”	No.	CG&N Committee.	Outside director education program.	Yes.	No.
<b>Unifi</b>	<p>“The Corporate Governance and Nominating Committee is required to oversee the Company’s process for the orientation and education of directors, and to ensure that the process is effective to enhance the knowledge and skills necessary or appropriate for the directors to perform their duties and responsibilities. All new directors must participate in an orientation process, which is overseen by the Corporate Governance and Nominating Committee. All directors are expected to participate in any additional continuing education programs offered by the Company to help directors maintain the level of knowledge and expertise necessary to perform their duties and responsibilities as directors of a public company.”</p>	Yes.	No; “expected.”	No.	CG&N Committee.	Internal.	No.	No.

	<p>deal appropriately with issues that arise. Each director will be reimbursed for the cost of up to \$7,500 in total per year for one or more continuing education programs (including reasonable travel and hotel expenses associated with attending such programs). To the extent such fees and expenses exceed \$7,500, such costs shall be approved and/or ratified by the Lead Independent Director.”</p>						
<p><b>Zumiez</b></p>	<p>“The Board and the Company have in place an orientation process for new Directors that includes background material about the Company, meetings with senior management and visits to Company stores and corporate offices.”</p>	<p>No express requirement, but implied.</p>	<p>No.</p>	<p>No.</p>	<p>G&amp;N Committee.</p>	<p>Internal.</p>	<p>No. No.</p>