

## **Proxy Analysis Shows Diversity of Diversity – Part 2**

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In April 2010, we took a first look at how corporate boards were considering “diversity” as required by the December 16, 2009 SEC mandate. We concluded then that boards’ were skating around the requirements with creative wordsmithing. Proxy statements issued during May appear to reference diversity even less than last month, pointing instead to “diversity in its broadest most comprehensive sense.” Most statements describe diversity of skills, experience and geography. Gone, though, are the legalese references to “naughts” – no mention this month of promises not to discriminate in board candidate consideration. Even companies with a sizable headcount of diverse candidates are understating their specific inclusion of diversity as a selection parameter. The following are snapshots of references to “diversity” in proxy statements issued during May, with no specific selection criteria. We have included the number of women directors on each company’s board in parentheses.

### **AÉROPOSTALE, INC. (4 women directors)**

“Board membership should reflect diversity in its broadest sense, including persons diverse in geography, gender, and experience. The Board evaluates each individual in the context of the Board as a whole, with the objective of recommending a group of members that can best support the success of our business and represent our shareholder’s interests through the exercise of sound judgment and utilization of their diverse backgrounds, skill sets and experiences.”

### **Cascade Financial Corporation (3 women directors)**

“Board membership criteria includes the requirement that each candidate should contribute to the Board’s overall diversity. (Diversity being broadly construed to mean a variety of opinions, perspectives, personal and professional experiences and backgrounds, such as gender, race and ethnicity differences, as well as other differentiating characteristics.)”

### **Pier 1 Imports (2 women directors)**

“The board of directors has adopted *Board Member Qualification Criteria* which set out the attributes and qualifications considered by the nominating and corporate governance committee in evaluating nominees for director. The primary qualities and characteristics the committee looks for in nominees for director are:

- management and leadership experience;
- relevant knowledge and diversity of background and experience; and
- personal and professional ethics, integrity and professionalism.”

“The committee believes that the board of directors should be composed of individuals who have achieved a high level of distinction in business, education or public service. As a group, the board of directors should possess a diverse and broad range of skills, perspectives and experience relevant to Pier 1 Imports’ business, such as:

- accounting and financial literacy;
- general knowledge of the retail industry;
- information technology experience;
- international business experience; and
- chief executive officer, chief financial officer or other senior management experience.”

“Although the *Board Member Qualification Criteria* do not contain a specific policy addressing diversity, the nominating and corporate governance committee considers whether each nominee complements and lends to a diverse and broad range of skills, perspectives and experience required of Pier 1 Imports’ board of directors.”

### **The Kroger Company (2 women directors)**

Director candidate criteria includes: “Ability to understand the perspectives of Kroger’s customers, taking into consideration the diversity of our customers, including regional and geographic differences.”

“Racial, ethnic, and gender diversity is an important element in promoting full, open, and balanced deliberations of issues presented to the Board, and is considered by the Corporate Governance Committee. Some consideration also is given to the geographic location of director candidates in order to provide a reasonable distribution of members from the operating areas of the Company.”

### **Saks Incorporated (2 women directors)**

“What role does diversity play in the selection of members of the Board?”

The Board does not have a specific diversity policy, but considers diversity of race, ethnicity, gender, age, cultural background and professional experiences in evaluating candidates for Board membership. The Board believes that diversity is important because various points of view contribute to a more effective, engaged Board and better decision-making processes. The Company’s Corporate Governance Guidelines state that the Board believes in a governing style that emphasizes, among other things, respect for diversity in perspective and includes individuals from diverse backgrounds. The Company’s Corporate Governance Guidelines also note that the size of the Board allows for diversity of contribution while promoting timely action on critical and time-sensitive issues.”

### **Krispe Kreme Donuts Inc. (2 women directors)**

“The Nominating and Corporate Governance Committee works with the Board of Directors to determine the appropriate characteristics, skills, and experiences for the Board as a whole and its individual members with the objective of having a board with diverse backgrounds and experience. In evaluating the suitability of individual Directors, the Nominating and Corporate Governance Committee believes the Board should reflect a variety of opinions, perspectives, personal and professional experiences, and backgrounds, such as geographic, age, gender, race, and ethnicity differences, as well as other differentiating characteristics.... Each member of the Board should contribute to the overall Board composition, with the goal of creating a Board that

can work collaboratively to guide the success of the Company and represent shareholder interests through the exercise of sound judgment using its diversity of experience.”

**Dennys Corporation (2 women directors)**

No mention of diversity.

**Salesforce.com Inc. (1 woman director)**

“The Nominating and Corporate Governance Committee also focuses on issues of diversity, such as diversity of gender, race and national origin, education, professional experience and differences in viewpoints and skills. The Nominating and Corporate Governance Committee does not have a formal policy with respect to diversity; however, the Board and the Committee believe that it is essential that the Board members represent diverse viewpoints. ... The Nominating and Corporate Governance Committee will also seek appropriate input from the Chief Executive Officer from time to time in assessing the needs of the Board of Directors for relevant background, experience, diversity and skills of its members.”

**Cost Plus Inc. (no women directors)**

“In its evaluation of director candidates, including the members of the Board of Directors eligible for re-election, the Nominating Committee considers a number of factors, including:

- the current size and composition of the Board of Directors and the needs of the Board of Directors and the respective committees of the Board, and
- such factors as judgment, independence, character and integrity, age, area of expertise, diversity of experience, length of service and potential conflicts of interest.”

“Although the Nominating Committee does not have a policy with regard to the consideration of diversity identifying director nominees, as discussed above, diversity is one of the numerous criteria the Nominating Committee reviews before recommending a candidate.”

“The Nominating Committee has also specified the following minimum qualifications that it believes must be met by a nominee for a position on the Board:

- the highest personal and professional ethics and integrity,
- proven achievement and competence in the nominee’s field and the ability to exercise sound business judgment,
- skills that are complementary to those of the existing Board,
- the ability to assist and support management and make significant contributions to our success, and
- an understanding of the fiduciary responsibilities that is required of a member of the Board of Directors and the commitment of time and energy necessary to diligently carry out those responsibilities.”

### **UTi Worldwide Inc. (no women directors)**

“Although we have no specific policy regarding the consideration of diversity when evaluating director candidates, our Corporate Governance Guidelines provide that in identifying candidates, the Nominations and Corporate Governance Committee will take into account the factors it considers appropriate, including, but not limited to: (i) the goal that the Board of Directors, as a whole, consists of individuals with a diversity of skills and experience with respect to: accounting and finance (including expertise that could qualify a candidate as an “audit committee financial expert,” as that term is defined by the applicable rules of the SEC), management and leadership, vision and strategy, business operations, business judgment, industry knowledge, corporate governance and global markets; (ii) individual characteristics and qualities, including strength of character, mature judgment, honesty, independence of thought and an ability to work collegially; and (iii) a balance of business interests and experience, relationships with management and ownership interests in the Company.”

### **Jos. A. Bank Clothiers Inc. (no women directors)**

“The Board does not believe that it is in our best interests to establish rigid criteria for the selection of prospective director nominees. Rather, the Board recognizes that the challenges and needs we face will change over time and, accordingly, believes that the selection of prospective director nominees should be based on skill sets relevant to the issues we face or are likely to face at the time of nomination. At the same time, the Board strongly believes that we will benefit from a diversity of background and experience on the Board. The Board therefore seeks prospective director nominees who, in addition to general management experience and business knowledge, possess an expertise in one or more areas critical to the Company, such as: retail, finance, international business, investment banking, corporate governance, financial control systems, risk assessment, logistics and investor relations.”

### **Perry Ellis International Inc. (no women directors)**

“In assessing the appropriate composition of the Board of Directors, the committee considers diversity. Although the Board does not maintain a specific policy with respect to Board diversity, the Board believes that the Board of Directors should be a diverse body. The committee approaches diversity broadly and takes into account the candidates’ various professional and personal backgrounds, skill sets and business perspectives.”

Specific consideration, among 15 specific factors: “The cultural diversity of the candidate.”

### **Tofutti Brands Inc. (no women directors)**

“We have no predefined minimum criteria for selecting Board nominees and do not have a formal diversity policy, although we believe that the independent directors should have a range of relevant experience, independence, diversity and strong communication and analytical skills.”

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