RESOLVED, That the American Bar Association urges public companies in the United States to diversify their boards to more closely reflect the diversity of society and the workforce in the United States.

FURTHER RESOLVED, That the American Bar Association urges public companies in the United States to adopt plans, policies and practices to diversify their boards and to include board composition in public disclosure materials.

FURTHER RESOLVED, That the American Bar Association urges governments, investors and other market players to call on public companies in the United States to voluntarily adopt plans, policies and practices for achieving diverse boards and to publicly disclose such plans, policies and practices.
I. Introduction and Overview

The Commission on Women in the Profession, its co-sponsors and supporters ask the House of Delegates to adopt this Resolution, which (a) urges public companies in the United States to diversify their boards; (b) urges public companies to adopt plans, policies and practices to diversify their boards and include information on board composition in public disclosure materials; and (c) urges state, federal and territorial governments to encourage public companies to adopt board diversity plans and policies. This Resolution does not ask federal, state, or territorial governments to enact regulations or legislation in support of diversity; nor does it seek to impose quotas on board composition. Instead, this Resolution requests that the ABA support the encouragement of voluntary compliance by companies in an effort to create diverse boards that more closely reflect the population and workforce of the United States. Diversity refers to individuals with a wide range of characteristics and experiences, including gender, race, ethnicity, age, sexual orientation, gender identity, and disability.

The ABA is committed to the elimination of bias and the enhancement of diversity in its own organization and in the legal profession and justice system. This commitment is not only recognized in prior resolutions passed by the House of Delegates, but also by the adoption of Goal III, which promotes full and equal participation in the association, the legal profession and the judicial system. There are eight diversity entities within the ABA charged with advancing Goal III: the Commission on Women in the Profession, the Commission on Racial and Ethnic Diversity in the Profession, the Commission on Sexual Orientation and Gender Identity, the Commission on Disability Rights, the Center for Racial and Ethnic Diversity, the Coalition on Racial and Ethnic Justice, the Council for Racial and Ethnic Diversity in the Educational Pipeline, and the Commission on Hispanic Legal Rights and Responsibilities.

There is a worldwide movement to enhance diversity on corporate boards, but not necessarily a consensus on how best to achieve that goal. Some countries have enacted legislation that imposes quotas, others have enacted regulations. Other countries, like the United States, seek voluntary compliance, encouraging companies to develop their own policies and procedures for the best way to diversify their individual company board.

The ABA has been instrumental in providing a pipeline of women lawyers to serve on public and private company boards. This has assisted companies in efforts to identify diverse board candidates. Through the ABA initiative DirectWomen, the ABA has also been a leader in the effort to promote greater diversity on boards. Adoption of this Resolution would allow the ABA and its members to continue to provide broad based support for diverse boards and is closely aligned with other ABA policies supporting equal treatment and opportunity for all persons to advance and succeed.
II. The ABA Has Been A Pioneer In the Effort to Increase the Representation of Women Lawyers on Corporate Boards

The ABA has been formally supporting the increase of women on corporate boards since 2007. In 2007, the DirectWomen Initiative was founded as a project of the Business Law Section of the American Bar Association. The mission of DirectWomen was then and remains today to increase the representation of women lawyers on corporate boards. DirectWomen identifies leading women lawyers from around the country who are able to provide the experience, independence, business judgment and diversity required for board effectiveness and good corporate governance. Each year, DirectWomen sponsors the DirectWomen Board Institute, a two day program for current and future directors. As of 2015, 146 women lawyers, many of whom are ABA members and leaders, have attended the Board Institutes. Indeed, 22% of the Alumnae of DirectWomen now sit on the boards of large public and private companies.

DirectWomen also holds seminars and other programs that provide information on the benefits of board diversity. Annually, DirectWomen also awards the Sandra Day O’Connor Board Excellence Award to women lawyers who have served with distinction as independent directors of public companies and have worked to advance the value of diversity in board positions. A selection committee chooses highly accomplished women lawyers who epitomize the spirit of DirectWomen and honors them and the companies on whose boards they serve for their achievements and commitment to promoting board diversity.

In addition to the general value of diverse boards, a recent study confirmed that inclusion of lawyers as directors on a corporate board contributes to increased value and a better informed perspective on litigation and regulatory risks.\footnote{Litor, Lubomire; Sepe, Simone and Whitehead, Charles, \textit{Lawyers and Fools: Directors in Public Corporations}, Georgetown Law Journal Vol. 102 (2014).} There are other significant benefits to diverse boards which are set out more fully below. DirectWomen has grown to the point where it now operates independently of the ABA. However, the ABA Commission on Women in the Profession remains one of its key strategic partners, and ABA members continue to be a source of candidates for the Board Institute.

III. The ABA’s Efforts Supporting Equal Pay For Women Will Be Enhanced By Supporting Board Diversity

Increasing the number of women on corporate boards is in furtherance of the ABA’s policy supporting equal pay for women, as evidenced by the passage of a resolution in 2010 (No. 107), supporting the enactment of the Equal Pay Act. A 2012 Study showed that having a greater number of women on Board compensation committees reduced the inequality in salaries paid to senior women executives, including the general counsel, as compared to their male counterparts.\footnote{Shin, Taekjin; \textit{The Gender Gap in Executive Compensation: The Role of Female Directors and Chief Executive Officers} (2011).} A Catalyst study has shown that increasing the representation of women on corporate boards is associated with an increase in expanded executive opportunities for women.\footnote{Catalyst, \textit{First Steps: Gender Diversity at the Top Pays Off From the Board Room to the C-Suite} (2013).} Supporting this Resolution and urging public companies to promote more board diversity is directly aligned with the ABA’s goal of supporting equal pay.
IV. The Statistics Show That Public Company Boards In the United States Are Not Diverse

The Securities and Exchange Commission (“SEC”) rules require public companies to disclose on proxy statements: (1) whether diversity is a factor in considering candidates for nomination to the board; (2) how diversity is considered in that process; and (3) how the company assesses the effectiveness of its policy for considering diversity. There is, however, no definition of “diversity” in the rule or guidelines for the type of information to be provided. This has resulted in disparate reporting results.

Despite the fact that there is no consensus on how to achieve board diversity, it is clear that board diversity is the focus of an ever-increasing amount of attention in the business and legal communities. It is now widely acknowledged that board diversity is not only a matter of good corporate governance, it is also a business imperative. There is a plethora of consultants, academics and non-profits providing research and commentary on this issue. News outlets are reporting on diversity efforts nationally and across the globe on a weekly and sometimes daily basis. Former and current officers and directors of public companies are speaking out to aid the effort of creating board diversity in the United States. The focus of the dialogue is on women and race. There is minimal or no data on board seats for LGBT and people with disabilities.

A. The Statistics

It is no secret that corporate boardrooms do not reflect the diversity of the population of the United States. The 2013 Census of the United States population shows a breakdown by gender of 50.8% women and 49.2% men. Breaking down the population by race shows:

- 77% White
- 17.1% Hispanic
- 13.2% African American
- 5.3% Asian
- 0.2% native Hawaiian and other Pacific Islander; and
- 2.4% who identify as two or more races.  

The 2013 Census also shows that 12.6 percent of the population reported having a disability. Yet, a 2012 study by the Alliance for Board Diversity that looked at board seats of Fortune 500 Companies by gender and race showed that 73.3% of those board seats were held by white men and 13.4% of those board seats were held by white women. In contrast, men of color accounted

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4 United States Census Bureau: [http://quickfacts.census.gov/qfd/states/00000.html](http://quickfacts.census.gov/qfd/states/00000.html).
5 [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_S1810&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_S1810&prodType=table)
6 There are minimal to no statistics on diversity of corporate board composition other than for race and gender, such as sexual orientation, gender identity, and disability. However, on February 19, 2015 the California State Treasurer renewed his call for more diversity in corporate boardrooms and at the same time called for broadening the definition of diversity to include sexual orientation and gender identity. By the time this Report gets to the House at the Annual meeting, we suspect that there will be more support for this expanded definition, which comports with the American Bar Association definition of diversity and inclusion. See, [www.treasurer.ca.gov/news/releases/2015/20150219.asp](http://www.treasurer.ca.gov/news/releases/2015/20150219.asp)
for only 10.0% of the board seats and women of color held just 3.3% of the board seats of Fortune 500 companies. Of the 13.3% of board seats held by people of color, this study showed that African Americans held 7.4% of the board seats, Hispanics held 3.3%, and Asian Pacific islanders held 2.6%.\textsuperscript{7}

Significantly, more research and data have been compiled regarding the number of women on corporate boards. A 2014 survey on the percentage of women serving on corporate boards of Fortune 1000 companies reports that the percentage of women (not distinguished by race) on these boards in 2014 was 17.7% compared to 16.6% for the same demographic in 2013.\textsuperscript{8} The percentage of women on the boards of the S&P 500 companies remained flat for the last two years at 19.2%.\textsuperscript{9} Although the numbers are slowly rising, the change is not significant. The story for women of color is even worse. In 2014, women of color made up 2.8% of board seats in Fortune 500 companies.\textsuperscript{10} As previously noted, this is down from 3.3% in 2012.

The InterOrganization Network’s (ION) analysis of the 2013 proxy season, which includes data from almost 2800 companies in the U.S., “continues to show that with few notable exceptions, smaller companies generally lag behind their larger counterparts in electing women to boards. . . only 12.2 percent of board members in the companies included in this analysis were women.”\textsuperscript{11}

Unfortunately, there is still little data currently available that indicated the percentage of LGBT board members. However, studies are underway and the importance of LGBT diversity both in the workplace and on corporate boards has been examined and documented.

As previously noted, these statistics show that the make-up of corporate boards in the United States does not reflect the gender balance and diversity of the society and work force of the United States. This is so despite research that documents that diverse boards are important to corporate operations.

B. The Importance of Diverse Corporate Boards

Plain and simple, diverse boards are good for business. Research shows that public companies with boards that are gender diverse and reflective of the diversity in the United States population have better decision making processes and overall stronger organizational health.

A Catalyst Study has determined that having more women on boards is a predictor for having more women in the C-Suite and in positions of leadership 5 years after board appointment, helping to solve the deficit of women in executive ranks.\textsuperscript{12}

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\textsuperscript{8} Women on Boards 20/20 Gender Diversity Index of Fortune 1000 Companies for 2014.

\textsuperscript{9} Catalyst, Increasing Gender Diversity on Boards: Current Index of Formal Approaches (2014).

\textsuperscript{10} Id.

\textsuperscript{11} Summary of Survey found in the Thirty Percent Coalition letter to Russell 1000 members October 24, 2014.

\textsuperscript{12} http://catalyst.org/knowledge/first-step-gender-diversity-top-pays-boardroom-c-suite
A McKinsey and Company study entitled “Women Matter” showed that corporations in which women are most greatly represented on boards of directors, or in other senior management positions, are also the corporations that perform the best. In addition, this same study showed that corporations that have 3 or more women serving in senior management positions score more highly, on average, on the organizational performance profile than corporations with no women serving in senior management positions.¹³

A Catalyst report entitled “Corporate Performance and Women’s Representation on Boards” found that gender diversity on corporate boards contributes to more effective corporate governance and to positive governance outcomes through a variety of board processes, as well as through individual interactions. Women directors contribute to important corporate-level outcomes because they play direct roles as leaders and mentors, as well as indirect roles as symbols of opportunity for other women, and inspire those women to achieve and stay with their corporations.

A Catalyst Study entitled “Why Diversity Matters” discussed how Firms that implemented LGBT-friendly policies experienced increases in firm value, productivity, and profitability. Firms that discontinued gay-friendly policies found they experienced decreases in the same performance measures. This was especially true of larger firms needing employees with technical expertise, as gay-friendly policies likely have a greater impact on attracting or alienating that more limited prospective hiring pool than the hiring pool for lower skilled jobs.¹⁴

Deborah Rhode and Amanda Packel from Stanford University performed an analysis of significant amounts of research supporting the case for racial, ethnic and gender diversity on corporate boards. The article on their findings concludes that all diversity, not just gender diversity, can improve decision making and enhance a corporation’s public image by conveying commitment to equal opportunity and inclusion.¹⁵ All of these findings align with the American Bar Association’s commitment to diversity and inclusion.¹⁶

¹⁴ http://www.catalyst.org/system/files/why_diversity_matters_catalyst_0.pdf; Why Diversity Matters
¹⁶ Some studies also conclude that diverse boards have an impact on financial performance. See, e.g.,
http://mckinsey.com/insights/organization/is_there_a_payoff_from_top_team_diversity; Board Diversification Strategy: Realizing Competitive Advantage and Shareowner Value (February 18, 2009); See, Credit Suisse, “The GS Gender 3000: Women in Senior Management” September 2014; See, Credit Suisse, Gender Diversity and Corporate Performance August 2012; Nancy M. Carter and Harvey M. Wanger, The Bottom Line: Corporate Performance and Women’s Representation on Boards (2004-2008) (Catalyst 2011); See, e.g., Andre Chanavat and Katherine Ramsden, Mining the Metrics of Board Diversity (Thompson Reuters 2013); Women in the boardroom: a global perspective (Deloitte 2013); No More Excuses: The case for bold action to move women onto boards and into senior executive roles (Ernst & Young 2014).


V. Why The ABA Should Encourage Public Companies To Adopt Plans, Policies And Practices To Diversify Their Boards And Include Information On Board Composition In Public Disclosure Materials

A. There is Overwhelming Support For Diversity But The Statistics Referenced Above Show that the Majority of Companies are Not Creating Diverse Boards

In addition to encouraging companies to diversify their boards, this Resolution also urges the American Bar Association to encourage companies to enact policies and practices to diversify boards; and to include that information on board composition in public disclosure materials. Although there is significant support for the idea of board diversity, that support is not yet reflected in board composition. Research (and actions taken by companies that have diverse boards) shows that having policies and procedures in place and complying with those polices helps achieve the diversity goal. As a result, this Resolution encourages companies to adopt policies and procedures that can help in creating a diverse board.

As noted earlier, the American Bar Association has been at the forefront of the efforts to place more women on corporate boards with the founding of DirectWomen in 2007. Thus, the ABA has been an active voice in the promotion of diversity on corporate boards. The adoption of this Resolution will amplify that voice.

B. Directors and Officers Favor Plans To Diversify Corporate Boards

A 2014 PWC study found that 57% of Directors on Fortune 500 Boards indicate that their boards are talking about recruiting new members with diverse backgrounds.\(^{17}\) In a 2012 survey of U.S. corporate board members by Spencer Stuart, three-quarters of the respondents indicated that their company had taken steps to support and promote board diversity.\(^{18}\) The Thirty Percent Coalition, a national organization of senior business executives, national women's organizations, institutional investors, corporate governance experts and board members working for increased board diversity, has a commitment from a cross section of corporate partners working together to increase board diversity. In addition The Thirty Percent Coalition has established a group of “Corporate Champions” comprised of former CEOs of U.S. companies and current members of corporate boards who are working with the Coalition to advocate for diversity on boards.\(^{19}\)

\(^{17}\) Governance trends shaping the board of the future: Board performance and diversity (PWC’s 2014 Annual Corporate Directors’s Survey), p. 10.


\(^{19}\) Founding members of the “Champions of Change” were: Aida Alvarez, nominating and governance committee member of Walmart; Doug Conant, former CEO of Campbell Soup, Chairman of Avon; Rosemarie Greco, former CEO Corestates Bank; Robert Igram, former CEO and Chairman of Glaxo Wellcome; William McCracken, former CEO and Chairman of CA Technologies, Pat Mitchell President and CEO, The Paley Center for Media; and James Turley, former chairman and CEO of Ernst and Young. Each of these members also serve on public company boards and their membership may be viewed at http://thirtypercent.org/news.
C. Institutional Investors Favor Plans to Diversify Boards

Institutional Investors are also encouraging companies in their portfolios to address diversity in the boardroom. For the last three years, Institutional Investors representing more than $3 trillion in assets under management along with some of the nation’s leading women’s organizations have sent letters to select companies in the Russell 1000 index urging them to embrace diversity on their corporate boards. Ninety-Six entities including State Treasurer’s Offices, pension funds, mutual funds and investment managers, foundations, religious institutions and women’s organizations signed the 2014 letters.20

New York State Comptroller Thomas P. diNapoli, who signed the Institutional Investor letter said: “The ability to draw on a wide range of viewpoints, background, skills and experience is vital to be competitive in the global markets…We are urging companies in our portfolio to increase board diversity, including gender diversity, as a means of increasing financial performance and generating long-term value for shareholders.” CalSTRS Corporate Governance Director Anne Sheehan further supports these efforts and states, “[w]e believe that diversity of age, ethnicity, culture experience and education enrich the effectiveness and efficiency of boards.”

According to Catalyst, “[a]round the globe and across all avenues for change – from legislated quotas to an explosion of advocacy groups championing voluntary measure – efforts for calling for actions to increase board diversity are approaching a tipping point.”22 Many countries are significantly ahead of the United States in their efforts to diversity boards.23 Granted, some of those countries have regulations or legislation requiring quotas which this Resolution does not advocate. However, the breadth of volunteer efforts at the national level and corporate interest pushing this agenda in the United States is significant.24

All of the organizations working to promote board diversity conclude that developing and executing on diversity policies will be the driver of change. A report prepared by Credit Suisse concluded that there are three main obstacles to achieving greater diversity on boards: cultural biases; work place related biases and structural policy issues. The study further found that policy (but not quotas) can significantly improve the diversity equation.25 Social science research suggests that “requiring individuals to give reasons for particular actions improves decision making quality, reduces reliance on stereotypes and helps to level the playing field for underrepresented groups.”26 By passing this Resolution, the ABA will add its considerable influence to the growing call for corporations to voluntarily adopt policies and procedures that provide accountability for the creation of a diverse board.

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20 See, the content of the letter and the signatories at http://www.30percentcoalition.org/outreach-efforts.
23 Id.
24 See, e.g., work from the following advocacy groups: DirectWomen, ION, Thirty Percent Coalition, Women on Boards 20/20, Alliance for Board Diversity and Catalyst. This list is not inclusive and does not include local organizations working on the issue of board diversity at the state level.
25 The CS Gender 3000: Women in Senior Management (Credit Suisse September 2014).

As previously noted, on February 28, 2010, an SEC rule went into effect that requires publicly traded companies to disclose in their annual proxy and information statements how a corporate board or nominating committee considers diversity in identifying nominees for director. The rule requires public companies to disclose: (a) whether diversity is a factor in considering candidates for nominations for boards of directors; (b) how diversity is considered in that process; and (c) how the company assesses the effectiveness of its policy for considering diversity. The rule does not define “diversity” or require a commitment to diversity from the companies. It only requires companies to disclose if they have a policy regarding board diversity. In public presentations shortly after the adoption of the rule, SEC Commissioner Luis Aguilar stated that “unfortunately while some companies provided useful information in the spirit of the SEC rule, many other companies provided only abstract disclosure – often times limiting their disclosure to a brief statement indicating diversity was something considered as part of an informal policy.” Again, the rule does not define diversity.

An analysis of the data provided by public companies during the first two years of the SEC reporting rule found that 98% of the companies claim to consider diversity in making board appointments; but that only 8% reported having a formal diversity policy. According to the author of the study,

...when interpreting diversity the ‘dominant corporate discourse is experiential... rather than identity-based. In other words, most frequently [companies] define diversity in reference to a director’s prior experience, or other generic factors, rather than his or her socio-demographic characteristics.’ The rule would be stronger if the SEC made clear that consideration of diversity constitutes a policy triggering additional disclosure requirements, and if the Commission defined diversity to include race, gender, and other demographic characteristics.

The study concludes (and Commissioner Aguilar concedes in a 2013 speech) that “identify related characteristics were what commentators on the rule wanted to see disclosed.”

Three years after the enactment of the disclosure rule, the information disclosed by companies has not substantially improved. A recent study has shown that although over half of the S&P 100 companies disclose some level of diversity data, there is a lack of specific disclosure of the statistics regarding each board nominee’s gender, race, ethnicity, skills,

27 See, Speech by SEC Commissioner Luis Aguilar, November 4, 2010: Board Diversity: Why it Matters and How to Improve It.
28 Id.
30 Id.
31 Id.
experiences and attributes. Commissioner Aguilar has stated that the collaborative actions of diversity advocates (which includes directors and officers of public companies) and shareholder resolutions urging companies to adopt charter language supporting board diversity has been instrumental in promoting real change.

The voluntary approach to increasing diversity has been very successful in the UK. A Report released in October 2015 by the Women on Boards Davies Review Commission found that there are more women on FTSE 350 boards than ever before, with representation of women more than doubling since 2011 – now at 26.1% on FTSE 100 boards and 19.6% on FTSE 250 boards. The Davies Commission has also seen a dramatic reduction in the number of all-male boards. There were 152 in 2011. Today there are no all-male boards in the FTSE 100 and only 15 in the FTSE 250. This private/public partnership; i.e. the urging by the Davies Commission to increase the number of women on boards has proven instrumental in increasing the number of women on boards in the UK. If the ABA passes this Resolution, the ABA can formally be a voice in the public/private partnership to move the needle on board diversity in the United States.

Recently, Representative Donald Beyer introduced H. Res. 445 “Expressing the sense of the House of Representatives that corporations should commit to utilizing the benefits of gender diversity in boards of directors and other senior management positions.” Just as the ABA support of the Equal Pay Act allowed the ABA to publicly support congressional efforts toward equal pay, support of the this Resolution would allow the ABA and its constituents to speak out on congressional board diversity efforts.

This Resolution simply calls for the ABA to urge state, federal and territorial governments to continue to call on corporations to voluntarily adopt policies, plans and procedures for achieving a diverse board, and to publicly disclose those plans, policies and procedures within the current reporting requirements outlined by the SEC or the states. As you can see from the research cited above, this was truly the intent of the SEC Reporting Rule.

Others are already encouraging the board diversity that this Resolution seeks. On March 31, 2015, nine large public pension funds asked the SEC to require companies to disclose more about their boards’ diversity. The group called upon the SEC to update existing rules by requiring companies to create a chart of each board nominee’s gender, race, ethnicity, skills, experiences and attributes. The SEC is already calling for companies to take this action on a voluntary basis and the ABA voice in support should be part of this coordinated effort in effecting real change.

Indeed, recognizing that a bar association’s commitment to equal opportunities for everyone, regardless of race or gender, encompasses support for diverse boards, in July 2012, the

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33 Id.
Philadelphia Bar Association Board of Governors passed a resolution supporting efforts by the City of Philadelphia to encourage companies that do business with the city to increase the diversity of their boards. In addition, resolutions encouraging board diversity have been passed in California, Illinois and Massachusetts.

There are many resources available to assist companies in developing policies and procedures to help them create a diverse board. By way of example, the Thirty Percent Coalition offers “Nominating Committee Model Charter Language on Board Diversity.” Many organizations are preparing candidates to move into a board role and/or are assisting companies in identifying qualified diverse candidates. Lack of qualified board candidates cannot be used as a legitimate excuse for maintaining a non-diverse board. The list below, although not exhaustive, shows the depth of resources available to companies seeking to diversify their boards. See, for example (and in no particular order), DirectWomen (www.directwomen.org); Catalyst (www.Catalyst.org); InterOrganization Network (www.ionwomen.org); The Boston Club (www.thebostonclub.com); Diverse Director Datasource (gmi3d.com); Diversified Search (Diversifiedsearch.com); Diversity in Boardrooms (diversityinboardrooms.com); Stanford Women on Boards Initiative (www.stanford.edu); The Leader’s edge/Leaders by design (www.theleaders-edge.com); Trewstart (Trewstart.com); Women business leaders of the US health care industry foundation (WBL.org); women corporate directors directory (women corporate directors.com); women in the boardroom (www.womenintheboardroom.com); Watermark Institute Board Access (www.wearewatermark.org); Executive Leadership Counsel (www.elcinfo.com); Hispanic Association on Corporate Responsibility (www.hacr.org); New American Alliance (www.naaonline.org); Out Leadership (http://outleadership.com); and Director Diversity Initiative (www.ddi.law.unc.edu).36

VII. Conclusion

The expectation that businesses diversify their boards is the “new norm.”37 As a thought leader, the American Bar Association is an important part of the coordinated actions among companies, investors, governmental bodies, advocates and regulators in changing the face of corporate boards in the United States. This is a change that is long overdue.

Respectfully submitted,

Michele Coleman Mayes, Chair
February, 2016

36 This list was compiled from a list on the web page of the Thirty Percent Coalition; a general internet search for relevant organizations and list in a footnote of Commissioner Aguilar’s March 21, 2013 speech referenced in footnote 30.
GENERAL INFORMATION FORM

Submitting Entity: Commission on Women in the Profession

Submitted By: Michele Coleman Mayes, Chair, Commission on Women in the Profession

1. Summary of Resolution(s).

Diversity of Public Company Boards

Requests that the ABA support a Resolution that urges public companies in the United States to diversify their Boards to more closely reflect the diversity of the population and workforce of the United States; encourages public companies to adopt plans, policies and practices to diversify their Boards and to include Board composition in public disclosure materials; and encourages governments, investors and other market players to express their support for public companies in the United States voluntarily adopting such plans, policies and practices and to publicly disclose those plans, policies and practices.

2. Approval by Submitting Entity.

This resolution has been approved by the Commission on Women in the Profession.

3. Has this or a similar Resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The ABA is committed to the elimination of bias and the enhancement of diversity in its own organization and in the legal profession and justice system. This commitment is not only recognized in prior Resolutions passed by the House of Delegates but also by the adoption of Goal III, which promotes full and equal participation in the association, the legal profession and the judicial system. There are four Goal III entities within the ABA: The Commission on Women in the Profession, The Center for Racial and Ethnic Diversity, The Commission on Sexual Orientation and Gender Identity, and The Commission on Disability Rights.

In August 2012, ABA President Laurel G. Bellows appointed a Task Force on Gender Equity to recommend solutions for eliminating gender bias in the legal profession, with a principal focus on the disparity in compensation between male and female partners.
Current ABA President Paulette Brown has created the Commission on Diversity and Inclusion 360 to formulate methods, policy, standards and practices to best advance diversity and inclusion over the next ten years. The Commission will review and analyze diversity and inclusion in the legal profession, the judicial system and the American Bar Association with a goal of developing sustainable action plans.

Endorsing a Resolution that supports encouraging greater diversity on corporate boards compliments all of the work and commitment the ABA has made to diversity.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

6. Status of Legislation. (If applicable)

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

If the Resolution is adopted, the ABA would be able to lobby for voluntary compliance of greater board diversity; adding its voice to the various state and national Resolutions that have been adopted.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

N/A

10. Referrals.

Business Law Section, Commission on Disability Rights, Commission on Sexual Orientation and Gender Identity, Commission on Racial & Ethnic Diversity, Diversity and Inclusion 360 Commission, Section of International Law and DirectWomen
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

**Melissa Wood**
Director, Commission on Women in the Profession
American Bar Association
321 North Clark Street
Chicago, IL  60654
T:  312.988.5676
M:  773.315.5399
Melissa.Wood@americanbar.org

12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Michele Coleman Mayes, New York Public Library, 476 5th Avenue, Room 214, New York, NY  10018-2788. Phone – 212.642.0115. Cell Phone – 917.327.9859. E-mail- michelemayes@nypl.org.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Diversity of Public Company Boards

Requests that the ABA support a Resolution that urges public companies in the United States to diversify their Boards to more closely reflect the diversity of the population and workforce of the United States; encourages public companies to adopt plans, policies and practices to diversify their Boards and to include Board composition in public disclosure materials; and encourages governments, investors and other market players to express their support for public companies in the United States voluntarily adopting such plans, policies and practices and to publicly disclose those plans, policies and practices. Contact: Melissa Wood, Phone: 312/988-5676, E-mail: melissa.wood@americanbar.org.

2. Summary of the Issue that the Resolution Addresses

There is a worldwide movement to enhance diversity on corporate boards, but not necessarily a consensus on how best to achieve that goal. Some countries have enacted legislation which imposes quotas, others have enacted regulations. Other countries seek voluntary compliance, encouraging companies to develop their own policies and procedures for the best way to diversify their individual company board.

The United States follows the voluntary compliance model. Securities and Exchange Commission (“SEC”) rules require public companies to disclose on proxy statements: (1) whether diversity is a factor in considering candidates for nomination to the board; (2) how diversity is considered in that process; and (3) how the company assesses the effectiveness of its policy for considering diversity. But there is no definition of “diversity” in the rule or guidelines for the type of information to be provided. This has resulted in disparate reporting results. This Resolution does not seek to change that voluntary compliance and only seeks to add the support of the American Bar Association and its already public commitment to diversity and inclusion to the current voices encouraging companies to take a more rigorous approach to establishing and outlining their diversity efforts.

Despite the fact that there is no consensus on how to achieve board diversity, it is clear that board diversity is top of mind with thought leaders. There is a plethora of consultants, academics and non-profits providing research and commentary on this issue. News outlets are reporting on diversity efforts nationally and across the globe on a weekly and sometimes daily basis. Former and current officers and directors of public companies are speaking out to aid the effort of creating board diversity in the United States.
3. **Please Explain How the Proposed Policy Position will address the issue**

The Resolution encourages diversity on public company boards. If the ABA resolution passes, ABA will publically be able to support diversity on corporate boards.

4. **Summary of Minority Views**

The minority view supports allowing companies the opportunity to place directors on boards without outside influence. However, the Resolution does not set any required rules for board placements, it solely encourages creation of diverse boards. That encouragement already exists in many forms in the U.S. and throughout the world.