

Human Capital Oversight at the Board Level: An In-Depth Examination Across the REIT Industry

SEC and Institutional Investors are Increasingly Focused on Human Capital Disclosures

Compensation Committees Extend Beyond Oversight of Executive Pay and Evolve into Broader “Human Capital” Committees

Summary

As investor pressure continues to build focusing on environmental, social, and governance (“ESG”) practices, as well as disclosure items surrounding such, it is critical that Boards develop an appropriate plan for oversight across these areas. Ferguson Partners Consulting (“FPC”) performed an in-depth examination across the public REIT industry and found that there is no one size fits all approach being used – however,

one trend that has emerged is a rebranding of Compensation Committees to a broader Compensation and Human Capital Committee (or some name variation thereof) that focuses on the “S” and that of social responsibility – namely oversight of diversity, equity, and inclusion (“DEI”), employee engagement, internal pay equity, and talent management/succession.

Background

Approximately one year ago (effective November 20, 2020), the Securities Exchange Commission (“SEC”) issued rule amendments requiring public companies to disclose “a description of the registrant’s human capital resources, including the number of persons employed by the registrant, and any human capital measures or objectives that the registrant focuses on in managing the business (such as, depending

on the nature of the registrant’s business and workforce, measures or objectives that address the development, attraction and retention of personnel).”¹ The principles-based approach (1) reflects an expectation that disclosures will be tailored to a company’s own business or industry using management’s judgment and (2) allows for the disclosures to evolve in response to changes in a company’s environment.

¹ <https://www.sec.gov/rules/final/2020/33-10825.pdf>

The rules do not include a definition of “human capital” or a list of required measures to disclose.

This lack of guidance has allowed for a wide interpretation of the rule, with many companies taking a “less is more” approach and disclosing minimal details. A PWC analysis of 2,000 Form 10-Ks filed from when the rules were enacted through February 28, 2021 found that 99% included information on employee demographics, 73% on employee lifecycle (e.g., hiring, learning/development, retention, succession planning, etc.), 62% on health and safety, 61% on total rewards, 47% on labor relations, and 32% on employee feedback/satisfaction.²

However, this new requirement did open the door for more detailed disclosures surrounding ESG practices, and specifically the “S” or social practices as it relates to this disclosure requirement. It is anticipated that human capital management disclosure and demand for details will gain momentum from investors and stakeholders in the coming years. With investors looking for more substance from these human capital disclosures, it is reasonable to assume that the SEC will consider a more defined requirement in the near future.

As human capital disclosure requirements begin to expand, Directors of public companies are seeing their responsibilities increase as well. Although not specifically participating in the day-to-day operations surrounding human capital management, Directors are now being tasked with an oversight role.

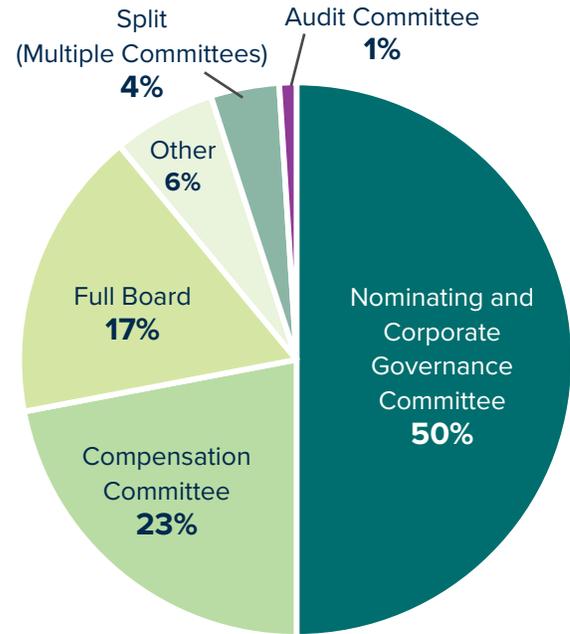
Companies should consider whether ESG topics should be addressed holistically or separated across Committees; specifically for human capital management operations, whether oversight will occur across the Board as a whole, an existing Board committee, or a newly defined subcommittee.

² https://viewpoint.pwc.com/dt/us/en/pwc/in_the_loop/in_the_loop_US/New-human-capital-disclosure-rules-Getting-your-company-ready.html

■ Key Findings

FPC specifically examined public filings of 174 internally-managed constituents of the Nareit All REITs Index (as of December 31, 2020). FPC found that the oversight of human capital management varies across the REIT industry. Of those REITs that disclose where various ESG responsibilities fall (127 companies), and as it specifically relates to human capital management oversight, nearly a quarter (23%) do so within the Compensation Committee or what is often times being rebranded as a Compensation and Human Capital Committee or some form of variation thereof. At the same time, it should also be acknowledged that the majority of companies do not bifurcate ESG and address such in a broader manner – most commonly across Nominating and Corporate Governance Committees (50%), the full Board of Directors (17%), and to a much lesser extent, an ESG specific subcommittee (6%).

Exhibit 1 — Human Capital Management Oversight Responsibilities



Reflects only those Nareit All REITs Index constituents (as of December 31, 2020) that have disclosed where responsibilities for human capital management oversight fall; Compensation Committees and Nominating and Corporate Governance Committees with expanded names have been classified under the standard committee name; In instances where the Compensation and Nominating and Corporate Governance Committee are one combined committee we have classified them under the Nominating and Corporate Governance Committee category.

As investors continue to expect expanded human capital disclosures, and the SEC inevitably responds with more stringent requirements, the ultimate question becomes, what actions should your company take in order to evolve with the changing times?

In instances where human capital management oversight responsibility falls under the Compensation Committee, REITs have begun expanding the title of their committees to better encompass their full responsibilities. Exhibit 2 contains a variety of examples of those instances

where the Compensation Committee has been rebranded and a corresponding expansion of the charter to reflect responsibilities that expand beyond the traditional executive pay oversight and into the social aspect of ESG.

Appendix

Exhibit 2 — Compensation Committee Titles and Expanded Charter Examples

Company Name	Committee Name	Charter Excerpt
American Homes 4 Rent	Human Capital and Compensation	The HCC Committee shall periodically review and report to the Board on the Company's programs for attracting, developing and retaining of key employees, including management development programs, technology and skills training programs, employee health and wellbeing programs and diversity and inclusion initiatives
Empire State Realty Trust, Inc.	Compensation and Human Capital	Oversee the Company's strategies and policies related to human capital management, including with respect to matters such as diversity and inclusion, workplace environment and culture, pay equity, and talent development and retention
Equinix, Inc. (REIT)	Talent, Culture and Compensation Committee	Reviewing strategies, initiatives and programs with respect to the Company's culture; talent recruitment, development and retention; and employee engagement; Reviewing strategies, initiatives and programs with respect to workforce diversity, inclusion and belonging; Overseeing succession planning efforts for the CEO and certain senior leaders of the Company
Federal Realty Investment Trust	Compensation and Human Capital Management Committee	Oversee the Trust's strategies and policies related to key human resources policies and practices including with respect to matters such as diversity and inclusion, workplace environment and culture and talent development and retention
Healthpeak Properties, Inc.	Compensation and Human Capital Committee	The Committee shall periodically review the Company's programs and practices for talent development and maintaining the continuity of capable management, including but not limited to succession plans for the Chief Executive Officer and other senior executives; The Committee shall periodically review human capital matters with respect to the Company, which may include but is not limited to the Company's demographics, diversity and inclusion initiatives, employee retention and employee compensation practices
PotlatchDeltic Corporation	Executive Compensation and Personnel Policies Committee	Assist the Board in its oversight of the Company's policies and strategies relating to human capital management, including diversity and inclusion
Prologis, Inc.	Talent and Compensation	Participating in succession planning for key executives; Advising management in attracting, developing and retaining key employees, including review of inclusion and diversity initiatives
Tanger Factory Outlet Centers, Inc.	Human Capital and Compensation	The Committee shall periodically review the Company's programs and strategies related to human capital management, including, but not limited to, retention, management succession, diversity, culture and engagement

Appendix

Exhibit 3 — Nominating and Corporate Governance Expanded Charter Examples

Company Name	Committee Name	Charter Excerpt
Essex Property Trust, Inc.	Nominating and Corporate Governance Committee	Review the Corporation’s Environmental, Social & Governance (“ESG”) goals and initiatives, including the Corporation’s Diversity, Equity and Inclusion (“D&I”) efforts and Corporate Social Responsibility (“CSR”) strategy, and provide updates to the Board on such efforts and initiatives
Gaming and Leisure Properties, Inc.	Nominating and Corporate Governance Committee	Oversee and review the Company’s strategies, activities, policies and communications regarding sustainability and ESG-related matters and make recommendations to the Board, including reviewing and recommending to the Board for approval, any guidelines, documents or policies, or any changes thereto, that comprise the Company’s ESG framework; Oversee shareholder engagement with respect to ESG matters; Review and assess succession planning for management and leadership of the Company
Physicians Realty Trust	Nominating and Corporate Governance Committee	The Committee shall oversee environmental, social and governance (“ESG”) matters relating to the Company. In furtherance of these responsibilities, the Committee shall periodically (i) receive reports from management on the Company’s ESG strategy, practices and performance and (ii) inform the Board regarding such matters; The Committee shall oversee the Company’s human capital and diversity and inclusion policies and initiatives, and shall oversee the Company’s Diversity, Equity and Inclusion Council and inform the Board regarding such matters
Sunstone Hotel Investors, Inc.	Nominating and Corporate Governance Committee	Oversee the Company’s policies, programs and strategies related to environmental stewardship, responsible investment, corporate citizenship, human rights, human capital management and other social and public matters of significance to the Company
Vornado Realty Trust	Corporate Governance and Nominating Committee	Consider social responsibility, environmental and sustainability matters and make recommendations to the Board regarding, or take action with respect to, such matters
Weyerhaeuser Company	Governance and Corporate Responsibility Committee	Provide oversight and policy direction on diversity and employee satisfaction; Review results and trends of the Company-wide employee satisfaction survey and Employee Issue Resolution process; Review Company diversity and equal opportunity programs, trends, and issues; Review management succession processes

■ Appendix

Exhibit 4 — Other Committee Title Examples

Company Name	Committee Name
CareTrust REIT, Inc.	Sustainability & Corporate Responsibility Committee
CoreCivic, Inc.	Diversity, Equity and Inclusion Committee
Hudson Pacific Properties, Inc.	Sustainability Committee
Kilroy Realty Corporation	Corporate Social Responsibility and Sustainability Committee
LTC Properties, Inc.	Environmental, Social and Governance Committee
Mack-Cali Realty Corporation	ESG Committee
Washington Prime Group Inc.	Sustainability Committee



Jeremy Banoff
Vice Chairman
Compensation Consulting Chicago

E: jbanoff@fergusonpartners.com

P: +1 (312) 893-2339



Erin Duber
Vice President
Compensation Consulting Chicago

E: eduber@fergusonpartners.com

P: +1 (312) 893-2343



Ferguson Partners

As a global talent management boutique serving all industries and with a strong concentration of real assets, healthcare, hospitality, and private equity clients, Ferguson Partners orchestrates the essential disciplines impacting human capital — Executive and Board Recruitment, Compensation Consulting, Diversity, Equity & Inclusion, Leadership Consulting, and Management Consulting — to deliver trustworthy solutions that help clients capitalize on the advantages of great leadership.