WOMEN IN POWER:
CLEARING PATHWAYS FOR WOMEN TO RISE TO POSITIONS OF ORGANIZATIONAL LEADERSHIP*

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ABSTRACT

In 1973, Eleanor Sheldon became the first woman on the board of the organization that became Citicorp.¹ A few years later she was also on the boards of Mobil Corporation and H.J. Heinz Company.² She saw herself “as a beginning, not a token.”³ Despite this promising beginning, almost fifty years later, women are still often treated as tokens on a majority of boards. There have been several initiatives implemented in the last few years to help move beyond tokenism, however. Having women on boards means not only that more women are moving into positions of influence, but also, improved performance is likely for the organization.⁴

There are many studies indicating the advantages to businesses that include women on boards both economically⁵ and reputationally.⁶ In addition, representation of women on boards challenges existing stereotypes and inspires young girls to think bigger.⁷ In doing so, the perception of industries being gendered is undermined and women are entering fields

¹ Copyright 2023. Cindy A. Schipani & Terry M. Dworkin. All rights reserved. The authors wish to thank Emily Unger and Brittany Maxwell, J.D. Candidates, University of Michigan Law School, for valuable research assistance.
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² Id.
³ Id. (citing a 1973 interview with the Fairchild news service).
⁶ Richard A. Bernardi, et al., Does Female Representation on Boards of Directors Associate with the Most Ethical Companies’ List?, 12 CORP. REPUTATION REV. 271, 276-278 (Sep. 2009), https://doi.org/10.1057/crr.2009.15.
which had previously been considered off limits. For example, the most notable of these off limits areas of employment are the science, technology, engineering and mathematics (STEM) fields. Yet, although women have been increasing in their participation in these industries, their participation still represents only 27% of workers, despite making up nearly half the national workforce. Just as it is widely acknowledged that giving young girls role models in STEM fields is important in increasing female participation in the area, so too would the increased participation of women on corporate boards encourage young women in business to work towards these positions.

The benefits of having women in positions of power also extends to political and social spheres. Many countries have recently sought to increase female representation either by putting forward more female candidates, or introducing gender balanced cabinets. Canadian Prime Minister Justin Trudeau announced the appointment of a gender balanced ethnically diverse cabinet in 2015, and has continued to propel women to significant positions within the government in later terms. When asked to explain his plan for a gender balanced cabinet, he answered only “Because it’s 2015.”

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10 Id.
13 See generally Anastasia Moloney & Nita Bhalla, Which Countries Shatter the Glass Ceilings with Gender Balanced Cabinets?, THOMSON REUTERS FOUNDATION (Nov. 24, 2020, 8:08 PM), https://news.trust.org/item/20201124191255-tq9sx/ [https://perma.cc/2WCZ-STQY].
16 Moloney & Bhalla, supra note 13.
Despite Trudeau’s belief that single gender dominated cabinets are outdated in the modern world, there is ample evidence suggesting that increased representation of women leads to more female representation in legislation which directly affects women, and results in more beneficial legislation involving children, families, and education. This importance is reflected in the number of countries that have introduced gender quotas to ensure the involvement of women in national governments. Although this reflects progress in the acknowledgment of the need for diversity in governments, the world is still far away from achieving gender balance in government. As of 2021, only five countries have parliaments with at least 50% women representatives, and in twenty-seven countries female representation is under ten percent. At the executive level, in 2021, women are even less well represented with only thirteen countries having a woman head of state, and fifteen countries having a woman as head of government.

This paper analyzes various initiatives seeking to provide opportunities for women to join the ranks of those in positions of power and the likely benefits beyond those to the individuals involved. It also offers a way forward for firms interested in attaining gender equity in leadership. Part I begins with a discussion of various legislative initiatives to increase the representation of women on boards followed by efforts of a stock exchange, institutional investors, proxy advisory firms, private companies, as well as individuals. Part II addresses the benefits for women in the workforce from an increase of women in positions of power in government and considers the uneven effects of the pandemic on women in the workforce. Part III then analyzes mentoring as a means toward fostering equality in the workplace. In Part IV we provide a number of business success stories, followed with

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19 Id. See also Tracy Osborn & Jeanette Morehouse Mendez, *Speaking as Women: Women and Floor Speeches in the Senate*, 31 J. OF WOMEN, POL’Y, 1, 1-21 (2010).
20 Miller, supra note 18. See also Ng & Muntaner, supra note 17.
23 Id.
24 UN Women, *supra* note 221, at n.3.
potential roadmap for organizations to provide pathways for women to rise to positions of leadership in Part V. Concluding remarks follow.

I. PROMOTING WOMEN ON BOARDS

It makes little business sense not to have greater female representation on boards. In addition to the issue of fairness, a diverse board may signal flexibility, creative thought, and open-mindedness, among other benefits. Many countries in Europe were quick to act on such information and mandated female representation several years ago. In the United States, progress has been left to the companies, although there are pressures from various investment sectors to increase diversity, with beneficial effects. From 2011 to 2018, the proportion of Fortune 1000 companies with at least 20% female board members rose from 29% to 62%.

As companies have introduced more measures to ensure gender diversity, over two decades of studies have shown correlations between increased gender diversity and improved corporate performance. For example, in 2007, Catalyst found that a high proportion of women on a Fortune 500 company’s board was associated with a higher return on sales, and an even higher return on invested capital (ROIC) than firms with the least proportion of women on their boards. Catalyst concludes that having women on boards and prioritizing diverse board composition is a business practice characteristic of high performing companies.

Similarly, in 2012, Credit Suisse published a study examining 2,380 firms in various industries

27 Dawn Lim, Black Rock Lending Costs Tied to Diversity, WALL ST. J. (Apr. 8, 2021), at B10 (stating that one of the goals is meeting targets for women in senior leadership positions).
and found that companies with gender balanced boards outperformed those with single sex boards, specifically finding that a multi-gender management team was positively correlated with “superior return on equity, debt/equity ratios, price/equity ratios, and average growth.” A 2015 meta-analysis analyzing the link between women on boards and corporate financial performance found that “the relationship between women on boards and accounting returns is more positive in countries with stronger stakeholder protections” and more widespread gender equality. In 2017, another study concluded that “financial performance is positively correlated to measures of board gender diversity” from examining a comprehensive longitudinal data set from across the Russell 3000 Index. More recently, in 2020, McKinsey and Company released a report that, following a broad study of over 1000 large companies across 15 countries, found that “the relationship between diversity on executive teams and the likelihood of financial outperformance has strengthened over time.”

In addition to financial success, there is evidence to suggest a correlation between including women on boards with better monitoring and strategy management, two key functions performed by a board. Monitoring management can be improved by the “expression of nonconforming opinions,” which is often encouraged by the presence of more diverse board members. This is because nonconforming opinions can directly combat the occurrence of groupthink. Groupthink is defined in the Psychology field as

35 Post & Byron, supra note 32, at 1560.
“a mode of thinking that people engage in when they are deeply involved in a cohesive in-group, when the members’ strivings for unanimity override their motivation to realistically appraise alternative courses of actions.”

The prevention of groupthink is significant because it can lead to serious errors on even the most competent boards. Other studies support this notion, finding that diversity is critical for reducing groupthink, innovation, and enhancing decision-making.

Despite the studies showing positive correlations between gender diversity and a variety of metrics which indicate business success, women are still underrepresented on corporate boards. In 2021, women comprised 29% of the membership on U.S. boards of directors. Some of the initiatives attempting to change this are described next.

A. Legislative Initiatives in California

California is the first state in the United States to increase board diversity through legislation. In 2018, it enacted Senate Bill 826. The law required corporations whose principal executive offices are located in California to have at least one female director by the end of 2019. By 2021, it required that companies with six or more directors have a minimum of three females on the board of directors; if a board has five directors, it must have two women. This sought to reduce the tokenism effect of only one woman. Failure to meet these numbers could result in a fine of $100,000 for

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44 Why Diversity and Inclusion Matter, supra note 40.
the first violation and $300,000 for a subsequent one. The Secretary of State is required to publish an annual report regarding compliance.

The law was struck down in 2022 following an equal protection challenge in *Crest v. Padilla.* In *Crest,* the Los Angeles Superior Court, applying a strict scrutiny analysis, found that the law violated the equal protection clause of the California Constitution. The decision will now face an appeal. Meanwhile, plaintiffs in *Meland v. Weber* claim that the law should be struck as unconstitutional under the United States Constitution. This case is awaiting trial.

Despite the failure of the California courts to uphold the law, it appears to have, thus far, had the desired effect. In 2018, when the state mandate was passed, ninety-one smaller, publicly traded companies had no women on their boards. By the end of 2019, that number fell to six. For larger companies, only one still had an all-male board, and that company was in the process of recruiting a woman. California’s progress in achieving gender balanced boards has outpaced the national rate, and now leads the national average by 5%.

Research from California also finds a correlation between companies with at least 30% of their board seats occupied by women and increased revenue. In addition, a report on the effects of SB 826 in California discovered that for S&P 500 companies headquartered in California, an increase in gender diversity on the corporate board is related to increased

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46 CAL. CORP. CODE §§ 301.3, 301.4, 2115.5, 2115.6, supra note 42.
49 Id. at 23.
54 Id.
55 Id. (noting the single company was Emphase Energy Inc.).
56 Newsom & Morgan, supra note 52, at 7.
57 Id. at 8.
year over year revenue growth.\textsuperscript{58}

\textbf{B. Other State Initiatives}

Several other states have proposed or passed legislation related to increasing board diversity. In 2021, Washington passed a law, which requires the boards of public companies to consist of at least 25\% self-identifying women by the end of 2022.\textsuperscript{59} Michigan is also following California’s lead with Senate Bill 0115, which, if enacted, will require domestic and foreign corporations with principal offices in Michigan to have a minimum of one female member on the board of directors and a staggered increase in that number based upon the total number of board seats.\textsuperscript{60} In New Jersey, pending Bill S3469 would create a mandatory minimum requirement for women on boards of corporations that have their principal executive office in the state.\textsuperscript{61} If adopted, Senate Bill 139, proposed in Hawaii in 2022, will require corporations with their principal executive offices in the state to aim to have a gender diverse board with a minimum of two or three non-male directors, depending on the total board size.\textsuperscript{62}

In 2019, the Governor of New York signed Senate Bill S4278 requiring domestic and foreign corporations authorized to do business in the state to report the number of women serving on each respective board of directors.\textsuperscript{63} Beginning in 2022, the Secretary of State is required to publish these findings every four years.\textsuperscript{64} In Maryland, House Bill 1116 was enacted in 2019 and requires tax-exempt, non-stock domestic corporations in the state with either operating budgets or sales of over $5 million to submit an annual report including information on the total number of board seats and the total number of women on the board.\textsuperscript{65} In 2021, House Resolution 114 passed in Pennsylvania encourages publicly held corporations to achieve equitable and diverse gender representation on their boards.\textsuperscript{66} A similar Ohio bill urges companies to increase gender diversity on their boards.\textsuperscript{67} In Illinois, Public

\textsuperscript{58} \textit{Id.} at 1.
\textsuperscript{59} \textsc{Wash. Rev. Code} § 23B.08.120 (2020); Newsom & Morgan, \textit{supra} note 47, at 18.
\textsuperscript{64} S.B. S4278, 2019 S. Assemb., Reg. Sess. (N.Y. 2019); Newsom & Morgan, \textit{supra} note 47, at 18.
\textsuperscript{65} H.B. 1116, 2019 Leg., Reg. Sess. (Md. 2019); Newsom & Morgan, \textit{supra} note 47, at 18.
Act 101-0589 requires all publicly listed companies with their principal office in the state to disclose information related to the racial and gender diversity of their boards, how diversity is considered in the selection process, and policies and practices for continued promotion of diversity.68

C. Nasdaq Stock Exchange

The Nasdaq stock exchange is one of the major organizations pushing for more diversity on boards. In December 2020, following California’s lead, Nasdaq introduced a rule to spur listed companies to have at least one woman on their board and another person who identified as LGBTQ or as a member of an underrepresented minority.69 After a period of public comment, the listing rule was approved by the Securities and Exchange Commission (SEC) on August 6, 2021.70

The rule requires all companies listed on Nasdaq exchanges to have at least one diverse board member or explain why they do not, by 2023.71 Companies with boards that have over five members must have two diverse board members, one of whom self-identifies as female or explain why not, by August 2026.72 This disclosure must be made prior to the company’s annual shareholder meeting in a proxy or information statement, or on the company’s website.73 The rule is designed to improve corporate governance by increasing diversity.74 The hope is that investors will make decisions about investing based on the diversity numbers thus increasing pressure on

68 Public Act 101-0589 (Ill. Aug. 27, 2019); Newsom & Morgan, supra note 47, at 18.
71 Nasdaq Rule 5605(f)(d).
73 Nasdaq Rule 5605(f)(3).
companies to diversify.\textsuperscript{75}

In addition, companies that do not meet the required numbers are given the opportunity to access “a network of board-ready diverse candidates” through a board recruiting service.\textsuperscript{76} The service would be complimentary for companies that do not meet the required number of diverse directors, but companies would not be required to use it.\textsuperscript{77} Consistent failure to comply or explain could eventually lead to delisting.\textsuperscript{78} Because the Nasdaq stock exchange includes some of the largest publicly traded companies, including Amazon, Apple, and Microsoft, this rule has the potential to have broad impact. But that potential may be dampened by limited penalties for failure to comply and the potential for courts to overturn the rule.

Very soon after the adoption of the rule, there was strong pushback. Attorneys general of GOP-led states called the requirements illegal quotas that discriminated against men and white people.\textsuperscript{79} Seventeen states supported a lawsuit brought by the Alliance for Fair Board Recruitment (AFFBR) against the SEC contesting its approval of the rule.\textsuperscript{80} In its opening brief, the AFFBR claims that the SEC’s order and the Nasdaq rule are unconstitutional under the first and fifth Amendments.\textsuperscript{81} Specifically, the brief argues that the rule should be subject to strict scrutiny due to its overt inclusion of favored and disfavored racial classifications, and that it would


\textsuperscript{76} Feller, supra note 70.


\textsuperscript{78} A grace period is provided for companies that fall out of compliance due to a vacancy on the board. See Mark Feller & Robin Nunn, SEC Greenlights New Director Diversity Disclosure Requirements for Nasdaq-Listed Companies, MORGAN LEWIS (Aug. 16, 2021), https://www.morganlewis.com/pubs/2021/08/sec-greenlights-new-director-diversity-disclosure-requirements-for-nasdaq-listed-companies [https://perma.cc/8AK6-AUBL].

\textsuperscript{79} Larson & Greenfield, supra note 75.


\textsuperscript{81} Brief for the Petitioner, Alliance for Fair Board Recruitment v. Securities and Exchange Commission, No. 21-60626, (5th Cir. Nov. 22, 2021).
fail to pass such scrutiny.\textsuperscript{82}

In addition, the states supporting the litigation claim, in an amicus brief, that the Nasdaq rule and SEC approval violate the equal protection clause of the United States Constitution by introducing racial quotas.\textsuperscript{83} They further claim a federalism issue in that the federal government is interfering with the states’ role in determining corporate law.\textsuperscript{84}

According to the SEC, however, the choice between complying and disclosure prevents the Nasdaq rule from violating the equal protection clause of the fifth amendment.\textsuperscript{85} The company explanation requirement allows the “[c]ompanies [to] craft the explanation themselves, and [they] are free to convey whatever position they wish on the value of board diversity, or no position at all.”\textsuperscript{86} Additionally, the SEC argues that “a rule that facilitates disclosures of information important to investors’ decision-making—without dictating what a company may say or who it may hire—should not be subject to [the] heightened scrutiny” utilized by the courts in addressing equal protection claims.\textsuperscript{87}

\textit{D. Institutional Investors, Investment Bankers, and Proxy Advisors}

Many corporations, including institutional investors, investment bankers, and proxy advisors, are making strides when it comes to increasing gender diversity on boards. BlackRock, a multinational investment firm, is asking boards of companies to disclose how diversity is considered in board composition.\textsuperscript{88} In 2020-2021, BlackRock withheld votes for one or more directors at over 2,300 companies globally for “corporate governance concerns” including insufficient diversity, among other factors.\textsuperscript{89} The company believes U.S. boards should aim to have at least two female board members and at least one of whom is a member of an historically

\textsuperscript{82} Id. at 24.
\textsuperscript{83} Brief for The States of Arizona et al., supra note 80.
\textsuperscript{84} Id. at 11-12.
\textsuperscript{85} Brief for Respondent, Alliance for Fair Board Recruitment v. SEC, No. 21-60626, (5th Cir. Nov. 18, 2022), at 51-53.
\textsuperscript{86} Id. at 54.
\textsuperscript{87} Id. at 57.
underrepresented group.\textsuperscript{90} State Street Global Advisors (SSGA), the investment management division of State Street Corporation,\textsuperscript{91} takes this a step further by requiring all global companies in which it invests to have at least one woman on their board to gain its support during the proxy-voting season.\textsuperscript{92} The company expects the boards of companies in major markets to be comprised of at least 30\% women by 2023.\textsuperscript{93} Invesco and Fidelity have likewise stated they will vote against nominating committee chairs at companies that do not have at least 25\% or 30\% female representation, respectively.\textsuperscript{94} Additionally, Vanguard and J.P. Morgan Asset Management will generally vote against the chairs of board’s nominating committees at companies that have not made strides in increasing board gender diversity.\textsuperscript{95}

Proxy advisory firms are also promoting gender diversity on corporate boards. Institutional Shareholder Services (“ISS”) recently expanded its policy to encourage all companies to increase the diversity of their boards. If a company does not have at least one woman on its board, ISS will generally vote against or withhold its vote for the chair of the nominating committee.\textsuperscript{96} Glass Lewis generally recommends against the nominating committee chair if the board has fewer than two gender diverse directors and will generally vote against the entire nominating committee if the board does not have any gender diverse members.\textsuperscript{97}

In 2020, Goldman Sachs announced that it would “only underwrite IPOs in the US and Europe of private companies that have at least one diverse board member. And starting in 2021, [it] will raise this target to two

\textsuperscript{90} Id.
\textsuperscript{92} Id.
\textsuperscript{93} Saijel Kishan, State Street Expects Companies to Have Women on Their Boards, BLOOMBERG (Jan. 12, 2022, 10:41 AM), https://www.bloomberg.com/news/articles/2022-01-12/state-street-expects-companies-to-have-women-on-their-boards [https://perma.cc/TW2F-6EEZ].
\textsuperscript{95} Id.
\textsuperscript{96} Id.
diverse candidates for each of our IPO clients." To ensure its commitment was realized, Goldman Sachs established a board diversity and engagement team to identify diverse and exceptional board talent for their clients. Goldman Sachs also established Spotlight, a program intended to provide training and networking opportunities to diverse individuals in the hopes of accelerating their entry onto corporate boards and provide support for candidates as they navigate that potential career path. This program provides eligible candidates with a platform, exposure, and networking opportunities that ensure they will be able to make “meaningful and long lasting contributions” on corporate boards.

Goldman Sachs’s requirements have produced results. Since this initiative has been introduced, it has taken 300 companies public, all of which complied with its policy. It has also placed 50 diverse board members, 92% of whom are women and 42% of whom are racially or ethnically diverse (Black, Hispanic, Latino, or Asian).

E. Private Corporate Initiatives

Corporations are increasingly stating an interest in social issues. Within the first five months of 2021, there were 610 news releases from Standard & Poor 500 members citing their environmental, governance, and social principles. A large number of these are focused on environmental concerns, but many are also concerned with promoting women and
minorities in leadership positions. Many firms are acting on those interests. Motives for doing so include pressure from investors, major lenders, and customers.

For example, Carol Tome recently agreed to come out of retirement to take over leadership of UPS, on whose board she had previously served. In May 2021, Thasunda Brown Duckett was selected to be president and CEO of TIAA. These appointments will help counter a decline in the already small number of female CEOs which dwindled during the pandemic. Pre-pandemic, twenty of the 342 CEOs in the Equilar/Associated Press CEO Pay Study were women. That number fell to sixteen in 2020. Nonetheless, it is increasingly seen as good business to have diversity.

Big banks provide another example of organizations that are embracing diversity. JPMorgan & Co., Bank of America Corp., Citigroup Inc., Wells Fargo and U.S. Bancorp have all agreed to hiring practices that mirror the Rooney Rule.

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107 See Paul Roberts, Board Diversity Program Rolls Out in State with Local Firms’ Support, SEATTLE TIMES, (June 2, 2021), at A1 (The program, the Black Board Initiative, wants to nearly triple Black board membership of major companies by 2028. Some companies backing the initiative include Amazon, Microsoft, and Starbucks).


110 Sarah Skidmore Sell, Female CEOs Saw Ranks Dwindle, Median Pay Slip Last Year, SEATTLE TIMES, June 1, 2021, at A12.


112 Jasen Reid, NFL’s Rooney Rule Should Be Strengthened, WASH. POST (Feb. 19, 2011), https://www.washingtonpost.com/opinions/nfls-rooney-rule-should-be-strengthened/2011/02/19/ABhb8YQ_story.html [https://perma.cc/RZ5J-E8SC] (It was adopted after a study showed black coaches were more likely to get fired and/or not hired even though they won more games than white coaches. See Julia O’Connell, The True Origins of the Rooney Rule: Part 1, GLOBAL SPORTS MATTERS (Feb. 5, 2021), https://globalsportmatters.com/listen/2021/02/05/the-true-origins-of-the-rooney-rule-part-1/ [https://perma.cc/Y9U-3ZKC]).
discrimination in selecting coaches.\textsuperscript{116} It requires that a team interview ethnic minority candidates for head coach and senior football operation positions when choosing someone for an open position. Three years after it was established, the number of African-American coaches had risen from 6\% to 22\%.\textsuperscript{117} The trend was reversed in subsequent years and by 2020 the number of minority coaches was back to 2003 levels.\textsuperscript{118} In 2020, after protests about inadequate progress, the number of jobs for which a minority must be interviewed was increased as was the number of candidates, and women could be counted as a minority interview for some positions.\textsuperscript{119} Additionally, a reward system was set up to benefit teams who develop minority candidates for head coach and GM positions.\textsuperscript{120} Finally, in 2022, a quota was established requiring at least one person from an underrepresented minority on the offensive coaching staff.\textsuperscript{121}

A variation on the rule was adopted by some in the legal profession. Known as the Mansfield Rule, it has been adopted by over 360 law firms.\textsuperscript{122} The firms pledge to include at least 30\% women, lawyers of color, those with disabilities, and LGBTQ+ in those they consider for a variety of positions including for equity partnership promotions, for governance and governance

\begin{footnotesize}
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\item Dave Sheinin et al., How The NFL Blocks Black Coaches, WASH. POST (September 21, 2022, 7:37 AM), https://www.washingtonpost.com/sports/interactive/2022/nfl-black-head-coaches/ [https://perma.cc/W58N-FJUB].
\item Jessica Guynn, Facebook Turns to NFL Playbook to Fix Diversity Problem, USA TODAY (June 18, 2015, 11:09 AM), https://www.usatoday.com/story/tech/2015/06/18/facebook-rooney-rule-nfl-diversity-silicon-valley-technology/28919649/ [https://perma.cc/KPM8-UCMN].
\item Jelani Scott, NFL Expands Rooney Rule to Include Women, Required Hiring of One Minority Assistant, SPORTS ILLUSTRATED (Mar. 28, 2022), https://www.si.com/nfl/2022/03/29/nfl-expands-rooney-rule-include-women-required-one-minority-assistant [https://perma.cc/SFTS-28P2].
\item Kevin Seifert, NFL says all teams must add minority offensive coach expands Rooney Rule to include women, ESPN (Mar. 28, 2022, 5:51 PM), https://www.espn.com/nfl/story/_/id/33617341/nfl-says-all-teams-add-minority-offensive-coach-expands-rooney-rule-include-women [https://perma.cc/XDG6-J8WD].
\end{enumerate}
\end{footnotesize}
roles, for formal pitch opportunities and senior lateral positions. Those selected will have status and influence in the legal profession. The 30% number was adopted because social scientists have determined that that percentage was sufficient to shift the individual from being seen as a token and to give her voice within the organization more credibility.

F. Individual Initiatives

Some women who have extraordinary power or influence are using those tools to help elevate the position of women in society. One such person is Melinda French Gates, who became one of the wealthiest women in the world upon her divorce from Bill Gates. French Gates recognized the importance of having women in power from a young age which in turn gave her the confidence to pursue a career in a traditionally male dominated field. She continues to emphasize this in her charitable donations through which she has repeatedly contributed to groups seeking to encourage women to do what she did. Her donations focus on taking three steps towards gender equality: (1) dismantling barriers, (2) fast tracking the progress of women in industries with an outsized impact on society, and (3) mobilizing shareholders to apply external pressure on companies to have women represented on their boards.

These steps were exemplified in 2019 when French Gates pledged $1 billion to her venture capital firm Pivotal Ventures. With that capital, Pivotal has been able to donate and invest hundreds of millions of dollars to more than 150 for-profit and nonprofit organizations including women-led

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123 Id.
124 Id.
128 Id.
venture capital firms, startup accelerators, and educational programs designed to teach skills ranging from leadership to machine learning and artificial intelligence. The goal of Pivotal, according to French Gates, is to push “women and people of color further along in the United States, faster.” To do so, she envisions “an entirely new community of women-led startups that can thrive independently of Silicon Valley.” She is advocating for a new community outside of Silicon Valley because she believes changing the existing structure would be too challenging. This strategy takes a large step away from traditional approaches which have focused primarily on inserting women into preexisting fields or communities, instead creating a new method to address the issue of gender equality and diversity.

French Gates has also teamed up with other powerful women such as McKensie Scott, ex-wife of Amazon founder Jeff Bezos. French Gates was responsible for helping Scott set up her philanthropic operations allowing Scott to become one of the top philanthropists in the United States, donating over $8.5 billion since 2020. The two have also donated money to the Gender Fund which seeks to advance equality and women’s leadership in Africa, Asia and Latin America.

Although donations by billionaire benefactors often make the headlines, individual initiatives are also visible on the small and local level. Women entrepreneurs are starting successful businesses to target many of the barriers that had previously made it difficult for women on corporate boards. Women are starting successful businesses in fields such as

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130 Id.
131 Id.
132 Id.
133 Id.
135 Id.
technology, healthcare, clothing and media and some women start-ups have a more significant impact on women in business broadly. For example, the product of the start-up Milk Stork has become a benefit that many companies are trying to introduce for female employees. The company assists new mothers by providing a service to ship their breast milk from anywhere in the world back to their home. This allows new mothers to re-enter the workplace faster and in doing so prevents women from losing their positions or losing out on hiring opportunities.

G. Training Initiatives

The drive to diversify boards has also caught the attention of universities which have begun to offer training on topics such as corporate governance and committee work to potential candidates. The National Association of Corporate Directors has instituted the Accelerate Program which is designed to connect diverse candidates with board opportunities. Begun in 2020, it has placed about 25% of participants in board seats. In 2021 companies in the S&P 500 added more directors than in any other year. In 2021, 43% of board appointments were first-time directors, up from 38%...
in 2020. The large majority of the new board members were women and minorities. Companies are also giving new board members “onboarding” training so they can be up to speed once they join. Blackstone has increased onboarding training for independent directors joining boards of companies in its portfolio. An additional tactic used by some companies is to assign longer-serving board member to be a mentor to the new board member. A special advantage of this is that the mentor can be a resource to answer questions in an atmosphere where the mentee does not need to feel embarrassed to ask.

II. WOMEN IN POSITIONS OF POWER IN GOVERNMENT

We have written elsewhere about how 2020 to 2021 was an inflection point leading to societal change. Multiple significant events during this time caused a societal shift. These included the pandemic with the resultant loss of jobs, shutdowns, and economic turmoil. The pandemic also brought to light the many inequities in our society. These were heightened by the killing of George Floyd and other Black Americans by the police. Political divisions intensified. Many of these events have carried forward to 2022. The pandemic continues although the vaccine has eased concern. But women, who disproportionately lost jobs still have not reentered the workforce to pre-pandemic levels. The lack of childcare and paid leave continue to be issues. Additionally, the devastating effects of climate change have caused great harm, and incidents of mass shootings have increased. Much of the turmoil is compounded by additional circumstances. This has led to what one historian described as a “polycrisis” prompting further societal changes. These include an increasing number of women in important positions in the political arena.

In addition to the selection of Kamala Harris as his running mate and

145 Emily Glazer, New Directors Get an Education, WALL ST. J., Nov. 9, 2022, at R2.
146 Id.
147 Id.
149 Jeanna Smialek et al., Shortage of Childcare Keeps Many Women from Advancement, SEATTLE TIMES, July 8, 2022, at A4.
150 Karla Miller, If You Want to Celebrate Moms, End the ‘Motherhood Penalty,” SEATTLE TIMES, May 15, 2022, at C12 (quoting Noreen Farrell, Executive Director of Equal Rights Advocates) (“If [the pandemic] did not prompt immediate change in work and care infrastructures, it has demonstrated in devastating clarity what needs to be done.”).
151 Jon Talton, Reinventing A City, SEATTLE TIMES MAG., Jan. 1, 2023, at A9 (citing Columbia University history professor Adam Tooze).
her resultant election as Vice President, President Biden has appointed many women to important positions. For example, Janet Yellen is the first woman to serve as Secretary of the Treasury. Cecilia Rouse is chair of the Council of Economic Advisors, Katherine Tai serves as United States Trade Representative, and Avril Haines is the first woman to lead the United States Intelligence Community. Of the approximately 1,500 agency appointees of President Biden, 58% are women.152 At the Department of Labor (DOL), nearly 70% of all appointees are women.153 The DOL statistics are particularly important because it is the agency that is “on the frontlines of the crisis facing women in the workforce.”154

Another example is illustrated by state 2022 mid-term elections results. Twelve women won governorships in their states, beating the previous record of nine, set in 2004.155 In three states, it is the first time a woman has served as governor. “Nobody questions whether [women] can lead” any longer.156

Women have made strides in the judicial arena as well. Three-quarters of the 97 federal judges confirmed by the Senate in the past two years have been women.157 Notably, one of those was the appointment of Ketanji Brown Jackson to the Supreme Court. This number is likely to grow in the next two years under President Biden and a Democratic party majority in the Senate. Female judges help reinforce the image of women as leaders.

A record number of women were also elected to Congress. In the Senate, twenty-five of the senators are women, as are 139 members of the House of Representatives.158 These elections are not just the result of multiple crises, but also of many years of preparation. According to the Center for American Women in Politics at Rutgers University, the record number of women in elected offices also results from decades of work by political groups and outside parties to recruit and train women to run for

153 Id.
154 Id.
155 Catherine Lucey, Record Number of Women to be Governor, WALL ST. J., Nov. 28, 2022, at A5.
156 Id.
157 Laura Litvan, President Builds a Judicial Legacy with Diversified Federal Courts, SEATTLE TIMES, Dec. 12, 2022, at A5.
158 Rebecca Leppert & Drew Desilver, 118th Congress has a Record Number of Women, PEEW RESEARCH CENTER (Jan. 3, 2023), https://www.pewresearch.org/fact-tank/2023/01/03/118th-congress-has-a-record-number-of-women/ [https://perma.cc/U4NA-WKUY].
In addition, women have gained power in state congressional positions since the last election. As more women join legislatures, more laws that will help women are being enacted. Perhaps one of the best recent examples of this is the laws mandating pay transparency. They are yet another step in the effort to reduce the wage gap that has so far defied elimination. Currently, women earn approximately eighty-three cents for every dollar a man earns. Washington, Colorado and New York City have legislation that requires employers to post pay ranges for jobs they are listing. Most women have traditionally not been as skillful as men in negotiations for pay, and are more reluctant to negotiate about it at all. Additionally, they often have less access to information about pay and usually ask for less when they negotiate. Knowing what an employer is willing to pay gives the

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159 Lucey, supra note 155.
165 These laws build on laws in California, Connecticut, Maryland and Rhode Island that require an employer to provide pay ranges upon request or at the time of a job offer; See Jana Bjorklund, Pay Transparency in Washington State, https://www.govdocs.com/pay-transparency-law-in-washington-state [https://perma.cc/2YXN-7FR9]; See also Jake Rosenfeld & Patrick Denice, The Power of Transparency: Evidence from a British Workplace Survey, 80 AM. SOCIO. REV. 1045 (2015); Linda Babcock et al., Nice Girls Don’t Ask, HARV. BUS. REV. (Oct. 2002), https://hbr.org/2003/10/nice-girls-don’t-ask (study showing 57% of men asked for more but only 7% of women asked for an increase).
166 See, e.g., Emily Amanatullah & Michael Morris, Negotiating Gender Roles: Gender Differences in Assertive Negotiating Are Mediated by Women’s Fear of Backlash and Attenuated When Negotiating on Behalf of Others, 98 J. PERSONALITY & SOC. PSYCH. 256, 265 (2010); Kathrin J. Hanek, et al., Gender and Competitive Preferences: The Role of Competition, Size, 101 J. APPLIED PSYCH. 1122, 1122 (2016).
applicant a better position from which to negotiate. It also points out pay discrepancies between employees in that organization as well as between employers. Citing those discrepancies often will result in a pay raise.\textsuperscript{169} This information gives applicants more confidence in salary negotiations.\textsuperscript{170} It also helps get women out of being permanently behind when pay is based on what she was paid in her last job.\textsuperscript{171}

Some employers do not like this loss of autonomy and are attempting different tactics to avoid it. For example, some are listing extremely wide ranges, which make the posted ranges close to meaningless. New York City requires employers to identify a good faith salary range. However, there is no guidance regarding what that means. As a result, Mount Sinai listed the pay range for a trauma surgeon as being from $400,000 to $800,000, and AT&T Inc. listed the pay range for a principal cloud architect as between $103,000 and 206,000.\textsuperscript{172} Additionally, an employer is not required to list benefits, bonuses or stock-based compensation. Such things give an employer a lot of discretion in a compensation package. There is clearly a need for some range rules. Another approach used by some employers is to simply not list a job. This is generally used for high-end jobs. Such a move likely means a reversion to the ‘old boys’ network with all is known biases and resultant discrimination.

Other areas with significant impact on women where the passage of legislation has been less successful are paid family leave and childcare.\textsuperscript{173} The pandemic led to an increasing number of articles calling for childcare so women could reenter the workforce and be successful in their jobs.\textsuperscript{174} President Biden also tried to get legislation passed but was unsuccessful. If women continue to gain influence in legislatures, this is an area where gains are likely to be next. It will also affect pay. In a study done by Harvard and St. Bonaventure professors, the lack of paid parental leave and that it is mostly taken by women, are the main factors that account for the lack of

\textsuperscript{169} Miller, supra note 150.
\textsuperscript{171} Many states and cities have laws prohibiting employers from asking about previous salary. See, e.g., MASS. GEN. LAWS. ANN. Ch.149, sec. 105A (West 1018). See also Kelsey Gee, Pay Queries in Job Interviews Under Fire, WALL ST. J., Apr. 18, 2017, at B6.
\textsuperscript{172} Theo Francis & Chip Cutter, Wide Pay Ranges Annoy Job Seekers, WALL ST. J., Nov. 8, 2022, at B1.
\textsuperscript{173} Miller, supra note 150 (noting that “a groundswell of support from employers and employees is necessary” to get them to the point where they will become law).
\textsuperscript{174} See, e.g., Smialek et al., supra note 149; Miller, supra note 137.
progress in narrowing the wage gap.\textsuperscript{175}

As family status continues to provide barriers to women, removing the perceived barriers associated with motherhood will allow more women to move into positions of power.\textsuperscript{176} Being a mother has been shown to have a significant impact on women in the workplace. For example, being a mother reduces the earning potential of women by between 5 and 10 percent and is thought to be responsible for a large proportion of the gender pay gap.\textsuperscript{177} Mothers are also less likely to be recommended for a promotion or given callback interviews than their childless counterparts.\textsuperscript{178} This trend does not extend for male parents, where fathers are advantaged compared to males without children.\textsuperscript{179}

Although, as described above, the movement to diminish gender disparities saw some encouraging success in recent years, the COVID-19 pandemic had uneven effects on men and women—particularly working mothers and women of color\textsuperscript{180}—which has inevitably eroded some of the progress made.\textsuperscript{181} Since the beginning of the pandemic, millions of jobs disappeared. As of January 2022, there were still 3.6 million fewer jobs than there were in April 2020.\textsuperscript{182} And while recessions typically affect male-dominated industries the most, the COVID-19 pandemic primarily affected the service sector and consumer-facing jobs—positions which are predominantly held by women.\textsuperscript{183}

\begin{footnotes}
\item[176] Dworkin et al., \textit{A Half-Century Post-Title VII: Still Seeking Pathways for Women to Organizational Leadership}, 23 UCLA WOMEN’S L.J. 29, 6 (2016).
\item[177] Shelley Correll et al., \textit{Getting a Job: Is There a Motherhood Penalty?}, 112 AM. J. OF SOC. (2007).
\item[178] Id.
\item[179] Id.
\item[181] See generally Alicia Sasser Modestino, Coronavirus child-care crisis will set women back a generation, THE WASHINGTON POST (July 29, 2020 7:00 AM), https://www.washingtonpost.com/us-policy/2020/07/29/childcare-remote-learning-women-employment/ [https://perma.cc/YDT6-GFG9] (arguing that women are more likely to bear the brunt of increased childcare and remote learning responsibilities with could have negative implications for the women’s labor force for decades to come).
\item[183] Anneken Tappe, \textit{Working Mothers are Quitting to Take Care of Their Kids, and the US
Many families were also forced to sacrifice a second income for childcare during the pandemic with women bearing the brunt of that hit. In the United States, roughly one in five working-age adults cited COVID-19 interrupting childcare arrangements as the reason they were not working, and of those not working, women between the ages of 25-44 were three times more likely to not be working as a direct result of childcare demands. This is especially concerning given that research suggests that women who drop out of the workforce to take care of children often have trouble getting back in, and the longer they stay out, the harder it is to return partially because the opportunities for pay increases or promotions compound on themselves over time.

Of course, the United States was not the only country to be affected by the pandemic. UN Women reports that an estimated 47 million women and girls are expected to be pushed into severe poverty because of the pandemic. This coincides with report from the International Labour Organization (ILO) which stated that in 2020, female employment declined by 4.2% around the world compared to the previous year, while male employment decreased by only 3%. The Americas saw the highest decline of 9.4% percent, followed by Arab states at 4.1%, and the Asia/Pacific region
with 3.8%. Additionally, mothers in countries where the gender employment gap has been historically higher may have an even harder time reentering the workforce if they assumed more childcare responsibilities because government stimulus payments have dwindled making childcare costs harder to manage. These effects are exacerbated by the violence some women endured as they found themselves forced inside their homes with abusive partners. Nearly one of two women report that they or someone they know experienced violence during the pandemic.

As we move further away from the peak of COVID-19, its effects continue. Many companies are choosing to continue working remotely despite the absence of lock down orders, and although men’s careers are benefitting from this shift, women’s careers continue to stall. That is, men who work remotely with children at home are more likely to report raises, promotions, and additional leadership roles. Meanwhile, three of four senior-level women cite burnout as the primary reason for downshifting or leaving the workforce.

To be sure, the pandemic had a devastating effect on women all over the world. But that does not mean we cannot recover. As discussed above, increases in the number of women in government has led to laws and proposed legislation to help women return to the workforce and to be more successful once there. It also means that more women with important positions are available as mentors. Part III will analyze the important of mentoring.

III. IMPORTANCE OF MENTORING TO FOSTERING EQUALITY IN THE WORKPLACE

The increase in women in positions of influence means that more women will be available as mentors. And most will likely be mentors. In an
early research project, denoted the Pathways Study, when influential women in government, business, and academia, were polled, they reported that having an influential mentor was the single most important factor in their success. They also indicated they thought it was important to be mentors in return.

Mentoring provides opportunities for employees ranging from increased compensation and satisfaction to increased opportunities for professional development. Access to mentors has been proven to play a crucial role in women moving up the corporate ladder. The literature has examined it from a variety of perspectives including social and cultural capital theory, socioeconomic class theory, personality theory, sociological theories of power, and economic theory of human capital. There are numerous articles about how to find a mentor, what a mentor should look for in a mentee, the ideal distance in terms of job status between the two, company-sponsored mentoring programs versus a person finding their own, etc. Almost all discussions, either explicitly or implicitly, are based on a premise that more powerful men will serve as mentors. This is because traditionally men held most positions of power.

Concerns about accusations of sexual harassment, however, may have dampened the availability of male mentors for some women. There are seemingly innumerable articles about sexual harassment and the #MeToo movement. The #MeToo movement and its offshoots have brought

198 See Dworkin, et al., supra note 176.
201 Schipani, et al., supra note 200, at 103-108.
204 Madhuri Satish-Van Atta, So Many People Googled “Sexual Assault” Since #MeToo That
increased focus to the problem of harassment in the workplace, which is beneficial. But, unfortunately, the dividing line between men and women in the workplace has thickened due to a developing fear on the part of men of interacting with women. Yet, because interaction is crucial for effective mentoring, women may find themselves at a significant disadvantage in finding the mentors needed to rise to positions of power in an organization. One encouraging trend which may help counterbalance this is the increase of women in power.

Many women once considered tokens on boards went on to serve on numerous boards after their initial appointments. As more women move into influential jobs, they are positioned to become important mentors. Yet, even though there may be more powerful women available to be mentors, there will not be enough to meet the need. Women cannot be expected to jeopardize their chances for success by carrying an outsized mentoring load.

There are several ways, however, that the burden can be shared. A dual mentorship model may be one of the more successful. The Nottingham University Business School employed such a program in its Global Mentorship Programme, with significant success. Between Fall of 2016 and Spring of 2021, the program has helped over 350 students find their career paths and provide resources and direction. More than 70% of the students who participated went on to further their education at one of the world’s Top 100 universities, among which 40% of these universities are ranked in the Top 20. Those who went straight into the workforce are now employed in renowned companies and institutions.

Another aspect of mentoring that is rarely mentioned in the literature is the idea of women mentoring men. The benefits of women mentoring men are significant in increasing the acceptance of women in power among men in junior positions in companies. These relationships encourage men to respect women as figures of authority in businesses and also allow men to

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Schipani & Dworkin, supra note 167.


Id.

Id.
learn behaviors which are appropriate between genders in the workplace. This is especially useful given the hesitancy some men may feel following the #MeToo movement to develop relationships with lower-level women in their organizations. Fear of similar complaints being made, skepticism about women and other fears contributed to this decline in intergender mentoring relationships. This combined with often inadequate or ineffective gender diversity training has a detrimental impact on providing women with opportunities to reach positions of power. By encouraging women in positions of power to mentor men, not only will future male executives have experience working with women in power, but the atmosphere of trust within organizations will encourage more cooperation in businesses.

IV. A FEW EXAMPLES OF BUSINESS INITIATIVES

Although women have not reached parity with men in positions of organizational leadership, many companies are working toward that goal. In this Part, we describe a sample of companies which have implemented various measure to increase the number of women in top management. This sample consists of the Allianz Group, BASF SE, Berliner Wasserbetriebe, the Mercedes-Benz Group PLC, MTU Aero Engines PLC, and Porsche PLC. All companies, except Berliner Wasserbetriebe are from the DAX, which is a stock market index of 40 blue chip companies trading on the Frankfurt Stock Exchange. Berliner Wasserbetriebe was taken as the only state-owned company in order to include another type of example in this project
work.\textsuperscript{216}

It is important to mention that many other companies also implement measures for increasing the number of women in executive leadership. The companies in our sample were selected to provide a diverse selection of strategies used by German multinational companies to place more women in management positions. German companies are interesting to examine because companies are required, by law, to meet a 30% gender quota for women on boards.\textsuperscript{217} Perhaps other companies seeing gender diverse leadership may find some of these approaches effective in their organizational settings.

\textit{A. Allianz Group}

The Allianz Group offers a wide range of insurance products and financial services to more than 83 million customers in more than 70 countries.\textsuperscript{218} In the year 2030, 30% of management positions are to be held by women.\textsuperscript{219} Worldwide, the insurance group generated sales of €152,7 billion and employed 159,000 people in 2022.\textsuperscript{220} By the end of 2022, Allianz SE, together with its German subsidiary, has set itself the goal of achieving a 20% share of women at the first and 30% at the second management level.\textsuperscript{221} Since 2008, the insurance group has also supported the “Initiative Chefsache,” a network of German companies and institutions.\textsuperscript{222} Driven by

\textsuperscript{216} \textit{Geschäftsbericht 2022 [Annual Report 2022], BERLINER WASSERBEITRIEBE (NOV. 1, 2023) (Ger.), https://www.bwb.de/de/assets/downloads/2022_geschaftsbericht-berliner-wasserbetriebe.pdf [https://perma.cc/2DPF-G265].}


\textsuperscript{218} \textit{Allianz Group Unternehmen [Allianz Group Subsidiaries], ALLIANZ (NOV. 25, 2022) (Ger.), https://www.allianz.de/unternehmen/ [https://perma.cc/2ZAR-Z98J].}

\textsuperscript{219} \textit{Frauen in Führungspositionen [Women in Management Positions], ALLIANZ (JULY 27, 2017) (Ger.), https://www.allianz-vertrieb.de/blog/frauen-fuehrungspositionen-133?utm_term= [https://perma.cc/A643-4U88].}


\textsuperscript{221} \textit{Employer Study, ALLIANZ, https://careers.allianz.com/Deutschland/content/AZD-Arbeitgeberstudie/?locale=de_DE [https://perma.cc/2PLZ-9KPx] (last visited Jan. 21, 2023).}

\textsuperscript{222} \textit{See And The Winner Is: Allianz Deutschland Ausgezeichnet als einer der Besten}
leaders and under the patronage of Germany's ex-Chancellor Angela Merkel, “Initiative Chefsache” promotes a more balanced ratio of women and men in management positions. At Allianz Deutschland PLC, the initiative introduced mandatory quarterly reporting on the staffing of management positions, with the aim of increasing the proportion of women in management positions in the company while maintaining a constant number of employees. These reports are disclosed to the respective department heads and previously missing transparency on the appointment of women in existing management functions is provided. This makes it easier for department heads to identify the status quo and define suitable measures to increase the number of women in their respective areas. The Allianz Group also implemented other measures to promote more women into leadership positions, including open communication between women of different business levels through created networks, as well as mentoring programs. In addition, family-bound women are further encouraged to take the next step in their careers through flexible work models such as part-time, home office and independent work arrangements.

Arbeitgeber für Frauen [And the Winner is: Allianz Germany Named One of the Best Employers for Women], ALLIANZ DEUTSCHLAND [ALLIANZ GERMANY] (Oct. 2020) (Ger.), https://careers.allianz.com/Deutschland/content/AZD-Arbeitgeberstudie/?locale=de_DE [https://perma.cc/D97P-33W8].


Frauenförderung in der Allianz: Ein Erfolgsbeispiel [Mentoring Programs for Women], ALLIANZ (Nov. 4, 2023) (Ger.), https://www.allianz.at/de_AT/blog/wissenswertes/frauen-allianz.html [https://perma.cc/945G-Y2RZ].

B. BASF SE

"Badische Anilin- und Soda-Fabrik" (BASF SE) is the largest chemical company in the world.\textsuperscript{229} In 2022, the company could post record sales of more than €87 billion and a loss of €4.4 billion.\textsuperscript{230} With its headquarters in Ludwigshafen, well over 111,481 employees, 232 production sites and six Verbund sites worldwide, BASF SE is one of the most influential companies in Germany and thus also has its place in the largest German stock index, the DAX-40.\textsuperscript{231} As of December 31, 2022, the proportion of women in management positions with disciplinary management responsibility was 27.2%.\textsuperscript{232} Among professionals, for example specialists without disciplinary management responsibility, the proportion was 33.0%.\textsuperscript{233} BASF SE promotes diversity in many directions including the workforce and the proportion of women within the company.\textsuperscript{234} For the company, diversity means, among other things, that people with different backgrounds work together and thus individual perspectives and skills come together.\textsuperscript{235} This should increase the performance and innovative power in the individual teams through creativity and motivation of all employees.

At BASF SE, diversity includes the selection and development of female executives.\textsuperscript{236} To promote gender diversity, BASF SE developed a compulsory model that provides managers and employees with a framework for action. The model includes ten principles which include aspects of human rights, labor, environment, and anti-corruption. The labor principle requires


\textsuperscript{230} BASF: Chemiegigant verbindet Wachstum und Nachhaltigkeit [BASF: Chemical Giant Combines Growth and Sustainability], STATISTA (Nov. 28, 2022) (Ger.), https://de.statista.com/themen/178/basf/ [https://perma.cc/QA5G-XZ8C].


\textsuperscript{233} Id.

\textsuperscript{234} Id.

\textsuperscript{235} Id.

This principle is mainly about diversity, including increasing the number of women at BASF SE and development opportunities. Managers are primarily responsible for successful implementation of the framework and are thus given a toolbox with a wide range of content for changing perspectives and promoting diversity. The toolbox includes not only continued focus on promoting female talent, but also includes allowing for part-time leadership, flexible working hours, increases in the investment in childcare facilities, job sharing, part-time work and optimization of the work-life-family balance. Additionally, BASF SE included mentoring programs to prepare women for management positions and develop long-term development plans.

BASF SE has set a global goal of 30% women in managerial positions by 2030 and has made important progress on this path. To achieve this goal and to constantly check the way there, BASF developed a global dashboard, which can be used to regularly check the implementation status. Furthermore, BASF SE has signed the Women's Empowerment Principles of the United Nations and is committed to promoting gender equality. In addition to these voluntary obligations, as a listed company in Germany, BASF SE must also comply with the law for the equal participation of women and men in management positions in the private and in the public sector.
C. Berliner Wasserbetriebe

Berliner Wasserbetriebe is the largest water supplier and wastewater disposal company in Germany.245 Unlike the other examples, this is not a private company. Regarding the status quo, women account for 31.4% of the 4,634 employees (as of December 2022), and the proportion of female managers was minimally below this figure at 31.3%.246 However, the proportion of women among managers reporting directly to the Executive Board was 54.2%.247 In order to further increase the proportion of women, especially women in management positions, Berliner Wasserbetriebe implemented a package of measures.248 These begin directly with recruitment. Here, women are given priority in the case of equal qualifications and suitability until a proportion of women of 50% is achieved across the entire company.249

Family-friendly working conditions are particularly worthy to mention here.250 For example, Berliner Wasserbetriebe offers a parent-child office. Employees can bring their children with them to work. This is intended to prevent employees from having to choose between work and family. It can, of course, be used by both parents and thus supports, for example, families in which both parents work.251 There are also many different working time models, such as flextime, teleworking or the option of a sabbatical. Furthermore, Berliner Wasserbetriebe also participates in a cross-mentoring


247 Id.

248 Id.


250 Id.

program. Here, for example, junior managers can exchange ideas with experienced managers from other companies.

D. Mercedes-Benz Group PLC

The Mercedes-Benz Group has a workforce of 171,382, sales of €150 billion as of 2022, and locations spread all over the world. This company is one of the largest developers and manufacturers of motor vehicles in the world. As of December 31, 2022, the proportion of women in management positions is 11.8% and 22.5% on the Board of Management at the first and the second level. The Mercedes-Benz Group PLC addresses the issue of the proportion of women as an important and challenging focus topic.

In 2006, the former Daimler PLC was one of the first companies in Germany to set itself the voluntary goal of increasing the proportion of women in management positions worldwide to 20%. This target was achieved by the end of 2020. By taking a holistic approach, from recruiting to development to making working time models more attractive, the ambition to increase the proportion of women remains the same. In 2025, 25% of management positions are to be held by women. Daimler AG became Mercedes-Benz Group AG on February 1, 2022. Following the successful stock market debut of Daimler Truck, the change of name underscores the Group's focus on the automotive business.

The Diversity & Inclusion Management team of the Mercedes-Benz Group is similarly tasked to focus on equal opportunities of all employees. The goal is to attract the best qualified specialists and managers for the

254 Annual Report 2022, supra note 252.
255 Id.
256 Id.
257 Id.
258 Id.
259 Id.
260 Id.
company regardless of gender, origin, age, religion, and sexual orientation. Mentoring programs such as "Bertha's Daughters," are designed to promote and support women in their individual career planning to help them develop their full potential. Bertha’s Daughters is a mentoring program that focuses exclusively on the development of female talents.

The promotion of women at the Mercedes-Benz Group begins with the next generation. Through participation in numerous career information days, including "Girls' Day," which is designed to give young women insights into technical apprenticeships and campaigns such as "She's Mercedes," the Mercedes-Benz brand has been in active dialog with women globally since 2015 and is committed to more equal opportunities between the sexes. In May 2022, the new "Keys to Success" campaign was launched together with singer Alicia Keys to reflect Mercedes-Benz's belief that diversity is a driver for creativity and innovation. Mercedes-Benz and Alicia Keys are thus campaigning for more equal opportunities between the sexes. The campaign aims to inspire women to empower each other, learn from each other and grow together to achieve positive changes in social interaction. As voices heard around the world, Alicia Keys and Mercedes-Benz together encourage women to confidently follow their personal paths - beyond the music industry.

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262 Id.
264 Bertha Benz, née Cäcilie Bertha Ringer (May 3, 1849 – May 5, 1944), was a German automotive pioneer and inventor. She was the business partner and wife of automobile inventor Carl Benz. On August 5, 1888, she was the first person to drive an internal-combustion-engine automobile over a long distance, field testing the Benz Patent-Motorwagen, inventing brake lining and solving several practical issues during the journey of 105 km (65 miles). In doing so, she brought the Patent-Motorwagen worldwide attention and got the company its first sales. Id.; see also *Mercedes-Benz Group AG: Unternehmensporträt [Mercedes-Benz Group AG: Company Portrait]*, FRAUEN IN MINT BERUFEN (Ger.), https://mint-frauen-bw.de/mercedes-benz-group-ag/ [https://perma.cc/H9NF-7TPJ] (last visited Jan. 21, 2023).
267 Id.
268 Id.
269 Id.
E. MTU Aero Engines PLC

MTU Aero Engines PLC, or MTU, is a German turbine manufacturer with more than 11,273 employees and is listed in Germany's leading DAX 40 index.\textsuperscript{270} As an aviation company, MTU offers numerous technical professions and is still heavily male-dominated.\textsuperscript{271} In 2022, the proportion of women across the entire workforce was 16.4\% and the proportion of women in management positions was 12.9\%.\textsuperscript{272} According to Hans Peter Kleitsch, Senior Vice President Human Resources, it is both a challenge and an opportunity for MTU to increase the proportion of women among its employees and managers.\textsuperscript{273}

To meet this challenge in a sustainable manner and thus exploit the opportunities and potential, MTU has taken numerous measures and divided them into four areas - measures of the hour, standard measures, measures of the future, and experimental measures.\textsuperscript{274} The measures include, for example, temporary part-time employment with subsequent entitlement to return to full-time employment and cooperation with schools and universities to give young women insight into high technology as early as possible.\textsuperscript{275} In 2017, the proportion of women in the active workforce was 12.9\% and for women in management positions 9.8\%. In 2021, the number of women in management positions rose to 11.8\%. For 2022, MTU set a goal of raising

\begin{footnotesize}{
\textsuperscript{271} Kennzahlen auf einen Blick: Diversity – Frauenanteil [Key Figures at a Glance: Diversity – Proportion of Women], MTU AERO MACHINES (Ger.), https://sustainability.mtu.de/de/kennzahlvergleich/?chart=DiversityFrauenanteil&isLines=true&isCols=false&isTable=false&inactiveSeries=&inactiveCats=&swappedLegends=false&indexedVals=false [https://perma.cc/V6HB-M9QD] (last visited Nov 4. 2023).
\textsuperscript{274} Id.
\end{footnotesize}
the proportion of women in management positions to 13%.\textsuperscript{276}

MTU also participates in a cross-mentoring program, which is a cross-company program that matches female employees who have already gained their first management experience with a mentor from another company.\textsuperscript{277} This program is intended to provide long-term support for the development of women in responsible management positions and to increase the number of female managers. The mentees set their goals in tandem with their mentors and agree on regular appointments.\textsuperscript{278} Standard measures include, for example, special support for parental leave for men to send a signal that "everyday family responsibility" is not just a women's task.\textsuperscript{279} MTU also offers flextime models, with the goal of a family-friendly working environment. Measures for the future include, for example, female talent pools.\textsuperscript{280} Scholarships are also intended to promote or support particularly promising female candidates.\textsuperscript{281} As an experimental measure, executives are sensitized through special training, whereby unconscious attitude patterns can be recognized and changed.

**F. Porsche PLC**

As a major German luxury car manufacturer, Porsche PLC employed almost 39,162 people and generated sales of €34.6 billion in 2022.\textsuperscript{282} Until 2012, however, no women worked for Porsche PLC at the top management level, directly below the executive board.\textsuperscript{283} The situation was no different


\textsuperscript{277} Cross-Mentoring München [Cross-Mentoring Munich], CROSS CONSULT (Ger.), https://www.crossconsult.de/leistungen/cross-mentoring/muenchen/ [https://perma.cc/GNE4-S86T] (last visited Nov. 4, 2023).

\textsuperscript{278} See CROSS-MENTORING MÜNCHEN [Cross-Mentoring Munich], CROSS CONSULT (Ger.), https://www.crossconsult.de/leistungen/cross-mentoring/muenchen [https://perma.cc/FMJ8-Y8XA] (last visited Jan. 21, 2023).

\textsuperscript{279} Alternative Arbeitsformen [Alternative Working Methods], supra note 275.

\textsuperscript{280} Id.

\textsuperscript{281} Id.


at its competitors, with the overall proportion of male executives in the automotive industry at 92% in the same year. Following a change in the Executive board, Porsche PLC implemented a strategy to significantly increase the proportion of women at the top three management levels below the executive board. Ultimately, the automotive manufacturer aimed to firmly establish equal opportunities along with other hard targets of the company, as well as to promote diversity.

As a first measure, Porsche PLC introduced a fair promotion policy, first determining the number of women in the upper pay scale of the respective departments and setting the minimum number of promotions of female employees to the next management level. This fixed promotion policy also applies to the next higher management level. Porsche PLC sees growth in upper pay scales as also important in providing equal opportunities. Promoting equal opportunities has been relevant to bonuses at Porsche PLC since 2012, meaning that managers with a lower number of promotions of female employees than targeted are financially disadvantaged.

In addition to the fair promotion policy, Porsche also tries to increase the motivation of women to take up management positions with its implementation strategy. To this end, focus group discussions are held regularly with women to determine their career needs. As a result of the findings, the car manufacturer has already invested in the construction of daycare centers and introduced flexible working models such as home office and part-time work models. These measures make management positions at Porsche PLC more attractive, particularly for women with children.

Four years after the strategy was introduced, Porsche increased its proportion of women at the third management level from 5.4% to 7.4%, as well as at the second level from 4.6% to 7.3% and at the first level from 1.9%...
Accordingly, a significant increase in the proportion of women can be seen at the top three management levels below the executive board. In 2021, Porsche recorded 15.5% women in the total workforce and 14.3% on the executive board. Porsche PLC does not set a target in this regard, but rather supports growth in the number of women in the respective areas organically. Although Porsche has made significant progress, it is still, however, a long way from gender parity.

V. A POTENTIAL ROADMAP FOR BUSINESS: EIGHT STEPS

In this part we propose an eight-step process which companies might utilize to increase women’s presence in top leadership positions. As identified in Figure 1, these are: (1) decide upon the strategic relevance of women on boards; (2) include women in the strategic model of the company; (3) build a process-based organization and through a process analysis take stock of the headcount of women; (4) identify strategically relevant key performance indicators (KPIs) with a correlation to a women’s process performance (WPPM) index; (5) develop and implement a controlling system which includes the WPPM index; (6) build and foster harmonized teams; (7) design an incentive scheme which includes the WPPM index; and (8) implement any needed structural reorganization to achieve a better score on the WPPM index.

292 This is done, for example, with key figures such as the women's target, which is set in the management teams. If the key figure is not met by the year-end meeting, the managers do not receive their variable salary component. See Helene Endres, Women in Top Management? That's how Porsche does it, MGR. MAGAZINE (Sept. 02, 2017) (Ger.), https://www.manager-magazin.de/unternehmen/autoindustrie/porsche-frauen-im-top-management-a-1128754.html[https://perma.cc/NJ2T-SN49].
Keeping in mind the visual representation of the process as presented in Figure 1, each step and its relevance is described in the following sections.

A. Strategic Relevance

Many companies nowadays are interested in integrating more women in management or supervisory boards not only in countries where legislation imposes a women’s quota but also in countries where it is (still) optional. Therefore, achieving a target number of women (women’s target) is strategically relevant for most companies. Consequently, companies search for an approach and a course of action to pursue a better integration of women into their boards and their business in general, but sometimes it is not clear which path would be the most appropriate. To this end, many companies ask themselves the following three questions: How does our company succeed in meeting the women’s target? How important is achieving a women’s target to management? What consequences are derived from non-compliance with a women’s target?

For instance, German law requires listed companies to achieve a gender quota of 30% on their supervisory boards.\textsuperscript{293} For managers this means that

\textsuperscript{293} Gesetz für mehr Frauen in Führungspositionen tritt in Kraft [Law for More Women in
they need to search for a solution or an implementation concept. For this purpose, key performance indicators (KPIs) are used to measure whether the target has been achieved in the current fiscal year. \(^{294}\) The KPI target for the number of women must therefore be integrated not just in the vision and mission statements of the companies, but also at an early stage in the strategic planning process. \(^{295}\) In addition to the vision and mission, the strategic mission statement also consists of the values and the underlying business model. \(^{296}\) Here, too, the question arises as to whether the women’s target is a value to which the company refers in public, e.g., in a Corporate Social Responsibility Report (CSR report). The CSR report is included in the annual financial statements of listed companies. \(^{297}\) This is a sustainability report that uses non-financial indicators to present the current environmental status of a company. In the case of the business model, the company's particular premises that set it apart from the competition play a role. The management must answer whether the women’s target can also be used here as a key figure or premise.

In addition to strategic planning in the tactical planning phase, women should appear in the organization charts by name, to show that the realization of 30% women is not just a faraway dream. In the operating planning and budgeting process, more women should be hired as responsible line managers who report planning figures for their departments. Moreover, the KPI women’s target should be included into strategic performance management tools such as the Balanced Scorecard (BSC) or into a KPI Dashboard. The women’s target could be, for instance, included in the internal perspective of the BSC and thus increase the focus on this critical area. In a financial dashboard, progress toward the women's target can be included as a qualitative metric and reported operationally at least once a month. For individual departments, management teams, and the supervisory

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\(^{296}\) Id.

board, the percentage of women should be reported at least once a year.

B. Strategic Model

The next step is development of a strategic model. Within the strategic model, the following five premises should be mapped in more detail: (1) Goal Formation; (2) Strategic Analysis; (3) Strategy Formulation; (4) Strategy Implementation; and (5) Strategic Control. When setting goals in the goal formation process, management defines the strategic objectives accordingly. Strategic targets for goal formation such as the Women Process Performance Management index (WPPM index) and the women’s target for the sales region's processing team should also be measured. To determine ways to achieve goals, it is necessary to have as realistic of a picture as possible of a company's starting position for a strategic analysis.

For this purpose, the environment analysis provides data on external opportunities and risks in the market and strengths and weaknesses in a company. This analysis should include the implementation of a women's target, which can be measured internally within a reporting dashboard on a monthly basis for areas, departments, and teams. When a strategy is formulated, it must be selected from various strategy alternatives. Care should be taken to ensure that strategies in particular include not only market and product objectives, but also key figures such as the proportion of women. As a result of the law in Germany requiring 30% women on corporate boards, the women's target in German companies should be based at a minimum on the legal requirement. A suitable target value might be, for example, 30% women, which could apply to all parts of the company.

If the 30% women's target is not reached, measures such as increased recruitment of women or better training of women to reach the next management level can be defined. In order to implement a strategy after its development, one needs appropriate tools. One possible tool is the Balanced Scorecard. In the BSC, four perspectives can be defined, such as strategic goals, measures, target values, and actions (see Figure 2).

It is important to note that the models should include relevant key

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299 Stoi & Dillerup, supra note 295.
300 Id.
performance indicators, such as the proportion of women in the company. In concrete terms, strategic control means that sanctions are imposed in the event of non-compliance with a strategic objective or a key performance indicator. If, for example, the overall target for women in the company of 30% is not achieved, more women could be brought into the company from the external labor market.

![Strategy Map of a Balanced Scorecard](image)

Figure 2: Strategy Map of a Balanced Scorecard.\(^{302}\)

A strategic model for a period of five to ten years should be developed and evaluated. Such a model could contain several strategic KPIs such as earnings before taxes (EBT),\(^{303}\) the women’s target, early warning indicators, and scenario targets including worst case, best case, and trend scenarios. Using the scenario technique or other strategic instruments, the KPI women’s target can be emphasized. The slogan “What gets measured gets done” shows how relevant it is to integrate the women’s target in scenarios e.g., as prognosis for the next ten years. The KPI women’s target could be

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\(^{303}\) EBT is an abbreviation for: Earnings Before Taxes (also earnings before taxes, pre-tax profit), a key business metric, results from the income statement of a company.
split into smaller indicators such as the target for female recruitments in the
overall workforce, the number of women in middle management, the number
of women in the management board, the number of women in the
supervisory boards, etc.

The business model, together with the vision and the mission of a
company, should offer a comprehensive and unified image in terms of goals
and messages. If the company addresses mainly female customers, the
company would surely benefit from emphasizing the importance played by
women leadership and the commitment towards achieving a high women’s
target. The women’s target can also be related to other sustainability goals
of the company. Whether it is self-commitment or legal compliance,
increasing the number of women at the top of companies should be clearly
communicated and lived throughout the company. Moreover, a women’s
target can also be a goal at the departmental level. The business model could
stipulate that managers are only eligible for a performance bonus (e.g., 20
percent) if their department or team has attained a women’s target of higher than
30 percent. This could be a consistent business model to increase the number of
women in the long term, including at the management level.

C. Business Process Analysis

The third step requires a business process analysis. To do this, six steps
must be implemented, for which the cost driver is the starting point (see
figure 3). For example, the cost driver in the purchasing process can be
determined by the number of order items. The more order items can be
carried out within the purchasing process at a given capacity and cost, the
more favorable the one-time order processing of an order item is.
First, activities, sub-processes, and main processes of different departments or of the company as a whole should be identified. This business process analysis can be conducted using anonymous interviews about the total headcounts in the cost centers. To know how many women work in these processes, the interviewers should keep a separate recording of male and female headcounts. The headcount data remains anonymous, but male and female capacities are distinguished for calculating the women’s target for each individual activity, sub-process, and main process. Second, cost drivers of the processes such as number of orders, number of male or female recruitments, number of women in management positions, etc. need to be identified. Third, the total process costs should be calculated for the main processes, for the sub-processes and finally for the activities. Fourth, the process cost rate must be calculated to determine the process costs for one order execution, etc. Fifth, the allocation of activities to sub-processes and finally to main processes can show the male process costs and the female process costs e.g., for one order. In companies with a low percentage of women, the female process costs over all activities will seem low compared to the male process costs. At this point it should be clear that the women’s target must be increased by recruiting more women into management and

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supervisory boards and into the departments and team. The process cost rates can be implemented into a product calculation instead of the burden rates used for the indirect areas.\textsuperscript{305} Process cost rates, e.g., for the sales process costs, the maintenance process costs, or the security process costs are interesting when they are integrated in a product calculation. Divided into male and female process costs, additional information becomes available.

\textit{D. Relevant KPIs}

For increasing the women’s target, it is necessary to measure a KPI, which we call “women process performance management (WPPM) index.” This KPI should increase over a long strategic planning period and has the following formula (see Figure 4):

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WPPM = \frac{\text{Customer Importance} \times \text{Customer Satisfaction}}{\text{Process Cost Rate (Women Capacities)} - \text{Benchmark Cost Rate (Women Capacities)}}
\]

Figure 4: Formula of Women Process Performance Management Index (WPPM-Index)

With the help of a customer survey, two KPIs should be measured: (1) the customer importance related to one process and (2) the customer satisfaction attributed to it. It is important to measure both KPIs because the customer should be able to evaluate whether an order process is important for them and whether they are satisfied with the order fulfillment time. The customer survey should be accompanied by a business process analysis as described above. The result of this business process analysis should be the process cost rate, this time calculated considering the women capacities. By comparing this process cost rate based on women capacities with a benchmark process cost rate of women’s capacities of another company, a quotient can be built, and a final equivalence number can be calculated.

If the WPPM index is higher than 1, the strategic performance and value creation is good. If the index is lower than 1, then the qualitative and quantitative premises should be optimized. A better position in comparison

with the main benchmark competitor should be achieved, for instance, by improving the process cost rate via better recruitment of qualified women or improving the customer experience. The following strategic KPIs can be measured beyond the WPPM index to show the proportion of women in the teams and departments as well as in the management and supervisory board (see Figure 5).

![Figure 5: Key Performance Indicators (KPIs) for the presentation of the women's target](image)

In order to increase the number of women in the next step, it makes sense to also report the input KPIs separately. Then these KPIs can be measured before the implementation of measures and afterward. For example, they should be measured before the introduction of such measures as a parent-child office, the implementation of mentors for women who come from other companies, and the reporting during recruitment as to why women were chosen and measured after the implementation of these measures.

**E. Controlling System**

The controlling system consists of the planning process, the cost accounting process, and the reporting process. The WPPM index can be integrated into a planning system. This means that the yearly budgeting process includes the women’s target and the WPPM index and incorporates these two KPIs for the next fiscal year for each department of an enterprise.

When a process cost rate and a benchmark cost are identified, the WPPM index can be calculated and planned. The relevant KPIs should be

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306 Peter Horvath et al., Controlling 146 (14th ed. 2020).
integrated in the monthly reporting process. A special chapter for important qualitative KPIs in each month end report ensures that the women’s target and the WPPM index are continuously measured, and a development trend can be registered. This is important when these two figures are also considered in determining the management variable remuneration.

**F. Harmonized Teams**

Once the processes are identified and KPIs are defined in a controlling system, the employees should be aware of them and consider them in their daily work. Harmonized teams where women and men work together often achieve better results and the defined KPIs like EBT, cost target and women’s target are achieved more easily. There is evidence that companies with women in management positions tend to be more successful. For example, the International Organization of Employers found that two-thirds of the companies in its sample that rely on a mixed executive suite were able to increase their profits by up to 15 percent.

Especially in today's digital age, Scrum Teams could be formed to ensure agile work in time-limited blocks (sprints). A Scrum Team is a collection of individuals (typically between five and nine members) working together to deliver the required product increments. The Scrum framework encourages a high level of communication among team members, so that the team can follow a common goal and adhere to the same norms and rules. Scrum teams that include male and female team members thus combine the time aspect of developing more flexible and agile solutions to problems, as well as ensuring an overarching handling of a problem through a more open approach with different solution alternatives.

To design a harmonized team, management must support teams formed by both men and women. Mentoring programs in particular should be included in harmonized teams. In this context, mentors, who discuss the goals to be achieved in the next fiscal year with their mentees in a semi-

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309 See Helen Denninger & Roman Stoi, **Agile Budgeting**, **2 CONTROLLER MAGAZINE**, 10, 10-17 (2020).

annual goal-setting meeting, should also take the female target into account as a key performance indicator and include the WPPM index where appropriate. Starting from the top management level, women should work together with men in management boards and supervisory boards but also at lower management levels and throughout the entire company. Moreover, it is recommended to integrate women into the structural organization and to show women and men by name in the company organization chart. In process-oriented organizations, a harmonized team can be linked to a project or a process and should be led by a person responsible for the process. The more women who are responsible, the better the KPI women’s target becomes. Furthermore, the number of women in harmonized teams can be measured project based (short term) or process based (in the long run).

### G. Incentive Scheme

The women’s target and the WPPM index should be measured and based on target achievement, and a variable part of the annual remuneration should be introduced. One instrument that could be included in an incentive system is the Objectives and Key Results (OKR) model. Here, operational goals are planned for a department in a 3-month cycle, such as increasing sales by 5%. This goal is anchored in an OKR plan and tracked with the help of a weekly measurement. Scrum Teams with male and female team members are suitable for this, as they can work out overarching measures to increase sales. At the end of the weekly limited time block (Sprints), an OKR review takes place in which the Scrum Team manager adopts the results.

### H. Structural Re-Organization

The result of a process-based analysis should be to obtain a better effectiveness and higher efficiency company-wide. The KPIs women’s target and the WPPM index can be measured based on processes at the team level, at the departmental level, and for the entire enterprise. Process optimization teams (POTs) can be created to design the actual order process,

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311 An organization chart graphically depicts the internal structure of a company or organization. Using a clear diagram, hierarchies, positions, departments, tasks and management responsibilities are displayed and correlated.

312 Helen Denninger & Roman Stoi, *Agile Budgeting*, 2 CONTROLLER MAGAZINE, 10, 10-17 (2020).


**CONCLUSION**

Although there are now more women on boards than there were in Eleanor Sheldon’s time, nearly fifty years ago, we are still a long way from parity. It is important to see continued female representation in powerful positions in government so that those responsible for laws and regulations become aware of the impact of those laws and regulations on women. As highlighted in Part II above, some progress is being made on this dimension.

But there is no need for companies to wait for governmental mandates before improving the number of women in positions of organizational leadership. Part IV provided examples of efforts made by several large companies which may be helpful for other companies to emulate. We have also outlined a detailed eight-step roadmap in Part V which companies might utilize to improve their number of women in high-level positions as well as throughout the firm.

From a fairness standpoint, it makes no sense to exclude women from organizational leadership, either consciously or unconsciously. And from a business perspective it makes even less sense. Presumably, it is important to gather data when making important decisions. Why not consider the viewpoints and experiences of women when gathering that data? Firms that fail to do so are missing out on potentially valuable data points.

And as highlighted in Part I, study after study over at least the last two decades have mapped out correlations between better performance on various financial metrics and the inclusion of women decision-makers.