I. INTRODUCTION

Peer into the boardrooms of our nation’s largest and most powerful corporations. There are few women sitting at the table. Women represent over half of all new hires, yet make up a far smaller proportion of corporate board members. In 2012, women held just 117 of the 568 directorships among the Fortune 50, amounting to less than twenty-one percent of total board seats.1

The ongoing debate over gender diversity in the boardroom, as well as acknowledgement of shareholder interest in board diversity, led the Securities and Exchange Commission (“SEC”) to adopt various amendments to its proxy disclosure rule in 2009.3 The present status of diversity disclosures under these amendments has not been comprehensively explored. In this Note, I provide the first empirical study of these disclosures, which reveals that, three years after the SEC implemented its revised rule in 2010, over half of diversity disclosures among the 2012 Fortune 50 fail to fully comply with the rule’s requirements.4 Ten percent of Fortune 50 proxies make no mention of diversity whatsoever.5 My extensive analysis of the Fortune 50’s most recent diversity statements and current numbers of women in their boardrooms shows that the SEC’s amendments have failed to bring any meaningful change to either disclosures or boardroom composition. The SEC has acknowledged that “the corporate track record for disclosure under this new requirement is quite spotty so far.”6 Incomplete disclosure has failed to provide investors the information they need to make informed decisions regarding board composition. This Note proposes several steps the SEC should take to provide investors with the comprehensive information they deserve—information fully in compliance with the SEC’s proxy disclosure amendments.

This Note argues that the SEC should issue enhanced guidance on the required comprehensiveness of diversity disclosures under its proxy disclosure rule via a detailed staff report distributed to all public companies. Part II examines the current status of women on corporate boards by providing original statistical evidence gathered from my empirical study. Part III examines the main elements of the SEC’s 2009 amendments to its proxy disclosure rule and explains why these amendments have failed to make a significant impact thus far. Part IV provides an original, detailed analysis of the statements that Fortune 50 companies provided in their 2012 proxies, concerning the inclusion (or exclusion) of diversity in their board nominating processes. This Part identifies those companies that have and have not complied with the SEC’s requirements and explores overall trends in current diversity disclosures. Part V offers a comparative perspective, exploring the drastic overhauls recently taken abroad to increase the number of female directors on corporate boards.7 Part VI explains how the SEC must guide U.S.

2 These data were compiled from an original empirical study. See infra Part III.C for an explanation of the study and the methodology behind it.
4 See infra Part IV for detailed findings from the empirical study.
5 See id.
companies in drafting their proxy disclosures to both improve compliance with the SEC’s disclosure rule and ensure that the rule’s purpose of benefiting shareholders is realized.

For the purposes of this Note, I presume that increasing the number of females on corporate boards of directors is a worthwhile goal. Many policymakers in the United States and abroad, as well as scholars, businesspeople, and shareholders, believe it is desirable to have women in the boardroom. Some have argued for such inclusion using business rationale, while others rely on ideas of fairness and equality to support their arguments. Because this Note focuses primarily on the policy choices made to achieve female inclusion and their effect, I do not devote significant attention to arguing why such inclusion is advisable. However, I believe it is a relevant subject worthy of further discussion.

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9 This is often referred to as the “social rationale perspective.” It rests on the notion that corporate boards should reflect the shareholders they serve as well as the customer and employee bases of their companies. See Butler, supra note 8, at 21.