



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER

October 10, 2019

Alexandre Behring  
Chair, Governance Committee  
Attention: Office of the Corporate Secretary  
The Kraft Heinz Company  
200 East Randolph Street, Suite 7600  
Chicago, Illinois 60601

Dear Mr. Behring:

I write to request that the The Kraft Heinz Company Board of Directors adopt a diversity search policy *requiring* that the initial lists of candidates from which new management-supported director nominees and chief executive officers (CEOs) are chosen include qualified female and racially /ethnically diverse candidates (an arrangement sometimes referred to as the “Rooney Rule”) and that director searches include candidates from non-traditional environments such as government, academic or non-profit organizations in order to broaden the pool of candidates considered. The policy should provide that any third-party consultant asked to conduct a director or CEO search will be required to follow the policy.

Based on our review of company proxy statements and nominating committee charters, The Kraft Heinz Company is among the S&P 500 companies that have not disclosed a diversity search policy that includes Rooney Rule language addressing gender and racial diversity for the selection of directors and the CEO. We do not intend for this policy to be a substitute for robust internal succession planning, although we encourage The Kraft Heinz Company to maintain and disclose a process for fostering a diverse talent pipeline for executive management. In addition, we believe that all of our portfolio companies, regardless of the current composition of their board of directors and upper management, should have a robust diversity search policy in place in order to institutionalize the board’s commitment to achieving and maintaining racial and gender diversity over the long term, including beyond the terms of the incumbent directors and CEO.

As Comptroller of the City of New York, I am the investment advisor to, and custodian and trustee of, the New York City Retirement Systems (“NYCRS”), which have more than \$200 billion in assets under management and are substantial long-term The Kraft Heinz Company shareowners. We believe that long-term shareowner value can only be created through strong corporate governance, and that board diversity—in terms of relevant skills and experience and gender AND race/ethnicity—is a hallmark of such governance.

A large and growing body of empirical research suggests a positive correlation between diversity and performance. Research by McKinsey, for example, suggests that companies with greater gender and racial/ethnic diversity in the leadership team have stronger financial performance.<sup>1</sup> Similarly, MSCI research suggests that gender diverse boards have fewer instances of bribery, corruption, and fraud.<sup>2</sup> Diverse boards can better manage risk by avoiding “groupthink,” a cognitive bias referring to the tendency among “homogenous, cohesive groups” to “consider issues only within a certain paradigm and not challenge its basic premises.”<sup>3</sup> In its report, the International Monetary Funds’ Independent Evaluation Office identified a “high degree of groupthink” as contributing to the IMF’s failure to correctly identify the risks leading up to the worldwide financial crisis.<sup>4</sup> In addition, Tufts University Professor Samuel Sommers has noted that “demographically diverse groups are exposed to a wider range of perspectives than homogeneous groups, but diversity can also lead people to process evidence more thoroughly, to remember complex information more accurately, and to discuss controversial and polarizing issues.”<sup>5</sup>

Adopting a policy that requires the consideration of women and minority candidates for every open director seat and CEO position enhances the search process and assists the board in developing a diverse board and executive team. A 2016 study published by the Harvard Business Review found that including more than one woman or minority in a finalist pool changes the status quo to help combat unconscious bias among interviewers. The researchers found that the odds of hiring a woman were 79 times greater when there were at least two women in the finalist pool, and the odds of hiring a minority were a staggering 193 times greater when there were at least two minority candidates in the finalist pool.<sup>6</sup>

In our view, many companies inadvertently and unnecessarily narrow the candidate pool in new director searches by only considering candidates with public company CEO, C-Suite, and/or board experience. Given that, as recently as two years ago, roughly 72% of CEOs on the Fortune 500 were white and male<sup>7</sup>, boards with “prior executive experience” policies are less likely to select females and minorities simply because there are fewer of these candidates from which to choose and more likely to recycle from a narrow pool of well-established and often “overboarded” minority business leaders. Looking beyond the C-Suite allows companies to augment their candidate pool with more diverse candidates. Moreover, broadening searches will allow companies to enhance diversity not only in the boardroom, but also in the C-Suite. According to a 2014 report by leading search firm Russell Reynolds, “as minority representation on boards increases, so does minority representation in the C-Suite.”<sup>8</sup>

The spirit of our request is consistent with the Business Roundtable’s call for boards to “develop a framework for identifying appropriately diverse candidates, which asks the nominating or corporate governance committee to consider women and/or minority candidates for each open board seat.”<sup>9</sup> We believe that it is time for major U.S. companies to heed that call and consider both. A responsive policy will enable The Kraft Heinz Company’s board to both (a) respond to growing investor demand for robust diversity policies and (b) comply with recent guidance from the Securities and Exchange Commission regarding required disclosures related to director qualifications and diversity (February 2019, Compliance & Disclosure Interpretations under Regulation S-K—116.11 and 133.13).<sup>10</sup>

The proposed policy resembles the Rooney Rule, adopted by the National Football League (NFL) in 2003, which requires teams to interview minority candidates for head coaching vacancies. The Rooney Rule was expanded in 2019 to include general manager jobs and equivalent front office positions. It does not dictate who should be hired and does not mandate an outcome. It does however, widen the talent pool and require the inclusion of a diverse set of candidates for consideration. It is difficult to ignore the positive impact of the Rooney Rule on diversity. In the twelve years before the Rooney Rule was enacted, the NFL had four minority head coaches and one minority general manager. During the twelve years subsequent to enactment, the NFL featured 16 head coaches of color (two of whom have held two different head coaching positions) and eight general managers of color.<sup>11</sup> Moreover, since enactment, ten NFL teams that reached the Super Bowl were led by either a minority head coach or general manager.

Many S&P 500 boards are taking action and have instituted similar policies with respect to board searches, including at Alliance Data Systems, Amazon, Costco Warehouse, Facebook, General Electric, Jeffries Financial Group and W.W. Grainger, often in response to constructive engagement from institutional shareowners such as the NYCERS.

Despite the increased focus on diversity by both investors and companies, the data shows that CEO and board representation of women and minorities is increasing at a slow rate and, in our view, remains unacceptably low. In 2018, the total percentage of women on Fortune 500 boards was 22.5%, up from 16.6% in 2012, and total minority representation was 16.1%, up from 13.3% in 2012, according to the “Missing Pieces Report” published by Deloitte and the Alliance for Board Diversity.<sup>12</sup> The proportions of S&P 500 company CEOs who are women (5.4%)<sup>13</sup> and racial minorities (less than 1% of Fortune 500 CEOs were black in 2018)<sup>14</sup> are even lower.

There is little doubt that significant gender and racial disparity still exists at the CEO and board level. As a consequence, we are beginning the next phase of our Boardroom Accountability Project, in which we are requesting board commitments to adopt specific changes to their policies and practices. In the first phase of the Project, we sought company-by-company reform to make “proxy access” a market standard. Today, more than 600 U.S. companies—including over 70% of the S&P 500—have enacted proxy access bylaws, up from just six U.S. companies when we launched the project in the fall of 2014. The second phase of the Project, launched in 2017, was a further step towards making boards more diverse, independent, and climate-competent. Phase two resulted in unprecedented disclosure of corporate boardroom diversity and processes for “refreshment” to bring new voices and viewpoints into boardrooms, with over 20 of our portfolio companies publicly committing to include women and people of color in the candidate pool for every board search going forward.

We believe that too often the board nomination process remains insular and that lack of board quality and diversity can be traced to a board’s failure to cast a wide net when looking for new members. According to PwC’s 2016 Annual Corporate Directors Survey, 87% of directors said they rely on board member recommendations to recruit new directors.<sup>15</sup>

We seek meaningful, long-lasting and structural change in market practice such that the search process ensures that female and minority candidates are considered for every open director seat as well as for the job of CEO. We are making a similar request to other S&P 500 companies that, like The Kraft Heinz Company, lack a meaningful diversity search policy inclusive of racial/ethnic diversity as well as gender diversity.

We would welcome the opportunity to discuss these matters. Please contact Michael Garland, Assistant Comptroller for Corporate Governance and Responsible Investment, at [mgarlan@comptroller.nyc.gov](mailto:mgarlan@comptroller.nyc.gov) to schedule a convenient time.

Thank you for your consideration and we look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott M. Stringer', written in a cursive style.

Scott M. Stringer  
New York City Comptroller

CC: Board of Directors

<sup>1</sup> Vivian Hunt, Dennis Layton, Sara Prince, "Why Diversity Matters," *McKinsey & Company*, January 2015, <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>; Vivian Hunt, Sara Prince, Sundiatu Dixon-Fyle, Lareina Yee, "Delivering Through Diversity," *McKinsey & Company*, January 2018, [https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity\\_full-report.ashx](https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity_full-report.ashx).

<sup>2</sup> Linda-Eling Lee, Ric Marshall, Damion Rallis, Matt Moscardi, "Women on Board: Global Trends in Gender Diversity on Corporate Boards," *MSCI*, November 2015, <https://www.msci.com/documents/10199/04b6f646-d638-4878-9c61-4eb91748a82b>.

<sup>3</sup> IMF Performance in the Run-Up to the Financial and Economic Crisis IMF Surveillance in 2004–07, *available at* <https://ieo.imf.org/en>.

<sup>4</sup> *Id.*

<sup>5</sup> Tufts University Department of Psychology, Diversity and Intergroup Relations Lab, Research and Publications, *available at* <http://www.ase.tufts.edu/psychology/sommerslab/researchPublications/>.

<sup>6</sup> Stefanie Johnson, David Hekman, Elsa Chan, "If There's Only One Woman in Your Candidate Pool, There's Statistically No Chance She'll Be Hired," *Harvard Business Review*, April 26, 2016, <https://hbr.org/2016/04/if-theres-only-one-woman-in-your-candidate-pool-theres-statistically-no-chance-shell-be-hired>.

<sup>7</sup> Lucinda Shen, "The Retirement of Amex's Ken Chenault Means Just 3 CEOs on the Fortune 500 Are Black," *Fortune*, October 18, 2017, <http://fortune.com/2017/10/18/american-express-ceo-ken-chenault-black/>.

<sup>8</sup> "Diversity in Leadership: Minority and Female Representation on Fortune 250 Boards and Executive Teams," *Russell Reynolds Associates*, 2014, [https://www.russellreynolds.com/sites/default/files/rr-gl-fortune\\_250\\_diversity\\_v8.pdf](https://www.russellreynolds.com/sites/default/files/rr-gl-fortune_250_diversity_v8.pdf).

<sup>9</sup> "Principles of Corporate Governance," *Business Roundtable*, <https://www.businessroundtable.org/policy-perspectives/corporate-governance/principles-of-corporate-governance>.

<sup>10</sup> U.S. Securities and Exchange Commission, *Regulation S-K*, <https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm#116-11>.

<sup>11</sup> Cyrus Mehri, Pamela Coukos, *Comments on Business and Financial Disclosure Required by Regulation S-K*, July 21, 2016, <https://www.sec.gov/comments/s7-06-16/s70616-293.pdf>.

<sup>12</sup> "Missing Pieces Report: The 2018 Board Diversity Census of Women and Minorities on Fortune 500 Boards," *Deloitte*, <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/center-for-board-effectiveness/us-cbe-missing-pieces-report-2018-board-diversity-census.pdf>.

<sup>13</sup> "List: Women CEOs of the S&P 500," *Catalyst*, October 4, 2019, <https://www.catalyst.org/research/women-ceos-of-the-sp-500/>.

<sup>14</sup> Gillian B. White, "There are Currently 4 Black CEOs in the Fortune 500," *Atlantic*, October 26, 2017, <https://www.theatlantic.com/business/archive/2017/10/black-ceos-fortune-500/543960/>.

<sup>15</sup> Paula Loop, "2016 Annual Corporate Directors Survey," *Harvard Law School Forum on Corporate Governance and Financial Regulation*, October 27, 2016, <https://corpgov.law.harvard.edu/2016/10/27/2016-annual-corporate-directors-survey/>.