Speaker 1: Welcome to Business Better, a podcast designed to help businesses navigate the new normal. I'm your host, John Wright. After serving nearly 15 years as senior vice president and general counsel at Triumph Group Incorporated, a global aerospace component supplier, I'm now a member of the securities and M and A groups at Ballard Spahr, a national law firm with clients across industries and across the country.

On today's episode, we'll be discussing ESG considerations in corporate governance, including how ESG got started, its development, its growing importance to investors, the impact of the pandemic and current ESG issues of importance like board diversity and climate change. Leading this discussion is Kahlil Williams, an associate in Ballard Spahr's Philadelphia office and co-leader of the firm's ESG working group. He represents companies and individuals in government and in internal investigations, actions involving securities and corporate governance and complex commercial litigation. Kahlil also helps his clients design and implement anti-corruption and anti-bribery policies and fulfill internal and external compliance obligations. Kahlil's guest in this episode is Dottie Schindlinger, executive director of the Diligent Institute and co-host of the Corporate Director podcast for Diligent Corporation, who will explain more about this in their conversation. With that, let's join Kahlil and Dottie.

Kahlil Williams: Hi, I'm Kahlil Williams. I'm the co-leader of the ESG working group here at Ballard Spahr and I'm here today with Dottie Schindlinger, the executive director of the Diligence Institute. Dottie, welcome to the podcast.

Dottie Schindli...: Thanks so much, Kahlil, it's great to be here with you today. It's fun to be on someone else's podcast for once.

Kahlil Williams: Right. And the reason I looked you up as you well know, is because I listened to your podcast on corporate governance and I thought you were terrific. And so I wanted to have you a host. With a bit of role reversal, it's nice to have you on the other side. But for the people that don't know about you, could you tell me a bit about what Diligent does and what you do for them?

Dottie Schindli...: Sure. I'm happy to. For those that are uninitiated, Diligent Corporation is primarily a software company that provides software solutions for boards of directors and senior leaders of companies and organizations around the world. We have about 20,000 customers that we work with globally, representing about 700,000 board members and senior leaders. And they really range from Fortune 500 companies, publicly traded and private companies, as well as nonprofit organizations, municipalities, public school boards. It's really across the board, no pun intended, who we work with. Pretty eclectic mixture. Diligent Institute is the global corporate governance research arm and think tank for Diligent Corporation. As you can imagine, considering how many different senior leaders we work with, we are constantly learning more and more about best practices in governance. And so the Diligent Institute's mission is to give back some of that knowledge to the broader market and make that available for free on our website diligentinstitute.com, just make it really easy for people to access that information.

Kahlil Williams: That's great. And we'll talk a bit about some of the materials that you have provided and that you guys put out, but I want to talk a bit about your career. I am sort of new to the corporate governance space, but I know that you've been around for a long time and you are a self governance geek. Your handle on Twitter is govtechgeek or @govtechgeek, which is really cool. You've been spending a lot of time thinking about how companies behave, how organizations behave and the challenges that they face. What drew you to this space? I know that you're an English major out of Penn, go Quakers, but it's maybe not exactly the route you thought that you think an English major might take. Tell me a bit about your journey.

Dottie Schindli...: Yeah. I didn't at age five, go, "I want to be a governance nerd when I grow up." That didn't really happen. Maybe that happens for some people. It didn't quite happen for me. No. My very first job out of college was to work at a small foundation. And while I was there, I was actually charged with helping to put together the board meeting materials and help coordinate board meetings. And I think that first exposure was what drew me to being very interested in governance. At the time I just really didn't know anything at all. And I thought it was kind of fascinating. I thought the idea of having sort of this independent, but connected body of people who oversee risk and help to spot opportunity and kind of provide a check and a balance to the senior management team by providing support, but also kind of overseeing that group's roles was really fascinating.

And so, I kind of went on from there to continue to learn more about it. And then eventually joined forces with a couple who were in the process of growing a new company called Board Effect. And really from there, the rest is history. That was about 15 years ago now, if you can believe it, that makes me feel so old, Kahlil. I feel 90 years old right now.

Kahlil Williams: You're young at heart.

Dottie Schindli...: Yeah, there you go. We joined up and created something called Board Effect, which is really a software company that got its start right here in Philadelphia in Manayunk and was designed primarily for nonprofit boards of directors, including community based organizations as well as colleges and universities, hospitals, healthcare organizations, that sort of group, and really designed around best practices in governance, which I'm very passionate about. We were acquired by Diligent Corporation at the end of 2016 and so then I joined forces with Diligent and at that point became sort of the head of thought leadership for Diligent and kind of the rest is history. Now I get to spend my time researching corporate governance practices, writing about it and speaking about it, which is great, good fun for a nerd like myself.

Kahlil Williams: Right. And I feel likewise, I think that there's so much going on in this space. It's a really interesting time and I hope you don't think that folks like me are posers and riding on your coattails. You mentioned that you started your career in nonprofits or thinking about how nonprofits operate and how their boards operate. Tell me a bit about the transition to working with or on public companies and their governance issues and really whether or not there are more similarities or differences between the types of ways that nonprofits cover themselves and the way public companies might.

Dottie Schindli...: That's a pretty hotly contested issue. I think if you ask five governance experts, they'll all give you five different, probably 25 different answers. But, I think for me, the similarities have always outweighed the differences, especially if you break it down in terms of what's the overall purpose of the board? Kind of what's it charged with doing? And how to do that well. Look, you clearly have differences in terms of the purpose of an organization. If it's a not for profit, the idea is to be sort of purpose driven and funding anything that would normally be profit back into serving the community that it serves. And then of course, in a publicly traded company, you are doing things sort of at the behest of shareholders and stakeholders more broadly, but really that's not all that different.

Both types of organizations have stakeholders. They have a stated purpose, they have to be growing and be profitable. I know profit's a weird word to use in the nonprofit sector, but it is really true. If you don't have a sustainable business as a nonprofit, you can't meet your mission. In both cases, boards are really there to do the things that we need boards to do, which include having that broad perspective that allows you to see potential areas of risk coming around the corner and potential opportunities that could be leveraged and then to be there as a support system and a little bit of motivation if you will, for the senior management team. And then to kind of serve as that firebreak, if you will, between senior management and the rest of the world, including any investors, shareholders and stakeholders.

Kahlil Williams: Right. Yeah, I think that it does make sense that there would be a lot of similarities there. And I think that there are a number of best practices. You talk about best practices all the time, which would certainly be applicable between any number of different types of organizations. Let's talk a bit about ESG and something that it's on everyone's lips.

Dottie Schindli...: Hot topic.

Kahlil Williams: Absolutely. And so when we say ESG, we typically mean the sort of environmental, social and governance issues that companies face and folks like me, maybe acting like it's brand new, but it's something that you have been talking about and thinking about for a long time. To quote the kids on social media, on Twitter, tell us how it started on one hand and how it's going on the other.

Dottie Schindli...: Yeah. You're quite right to say it's not new. ESG has maybe had different letters in the past. We used to call it corporate social responsibility, CSR programs. We might've been talking about trying to meet sustainable development goals that come out from the UN. The truth is these go back at least 20 years at this point, if not further. But I will say that ESG has really taken on some additional energy and interest because of the work of the investor community. You have investors now seeing that companies that are strong on various ESG metrics tend to outperform their industry peers. And then you have really the biggest source of motivation are the investors themselves. You have this growing group of millennial and younger aged investors who care deeply about the planet, who care deeply about how a company treats its employees and what it does around suppliers, how it thinks about supply chain issues, how it thinks about its impact on local communities. They care deeply about making sure that companies are not engaging in fraudulent practices or corrupt practices and are not perhaps involved in creating additional corruption in developing countries.

These are the things that these investors care deeply about. And once those who are investing dollars in businesses start to say what they care about, very quickly so do businesses. Not to be Machiavellian about it, but it is kind of true. If there's a lot of energy coming from the investor community, it does become a much bigger issue. I think that's why we're seeing it grow in prominence, particularly in the last, I would say five years.

Kahlil Williams: Sure. And just to be clear, so you do a number of predictions and sort of thinking about sort of what's going to happen in corporate governance in the coming year, doing look backs, which I find extremely helpful. And so in 2020 you had some predictions for the types of things that might happen on the ESG front. Tell me what those predictions were, what you got right and what you might've missed.

Dottie Schindli...: Yeah. So didn't see a pandemic coming, cannot claim that I had that one on the predictions list.

Kahlil Williams: I won't hold that against you.

Dottie Schindli...: Yeah. Thank you. Yeah. Honestly, we had kind of entered 2020 thinking that this was going to be the year of corporate focus on climate change and climate action. And there were a lot of reasons to really think that because you had coming into the year, you had the Davos Forum, with World Economic Forum, focused entirely on climate change. One of their keynote speakers was Greta Thunberg, just to give an example. It really was a year that a lot of corporate players, BlackRock, State Street, Vanguard, they were putting lots of pressure on companies to make sure that they were adhering to SASB metrics or to the TCFD recommendations. You had the International Business Council coming out with its new principles and the metrics around how to more consistently measure ESG variables across industries.

A lot of energy, a lot of momentum coming into 2020 and then the pandemic hit. And I don't think it's fair to say that everyone let their foot off the gas around dealing with climate change. I don't think that's true, but honestly, certain things did take priority, like ensuring the health and safety of our workforces and the health and safety of the communities and customers that we serve and keeping supply chains running, which became a major problem for so many companies. I think the pandemic definitely changed many conversations and had a huge impact.

Coming into 2021 though, look, the pandemic is not new and while it is getting worse, not better right now, there does seem to be a bit of a light at the end of the tunnel with the vaccine rollout. We're starting to see more vaccinations going into more arms and that is positive. We also see other scary things like variants of the virus that are more virulent, more contagious. That's very frightening. It's still a very mixed picture, but I do think most investors are now thinking about what happens next? And I think we're going right back into, okay, maybe we didn't make as much progress in 2020 as we needed to on climate change, we can't let ourselves off the hook here. We've got to get back to this and do this right.

Kahlil Williams: Tell me, so what other? That's wonderful. One other issue that I've seen a lot more come up this year, I think following the murder of George Floyd is attention to board diversity. And your company recently did a report with the New York Stock Exchange about board diversity, refreshment and other ways of helping to change the composition of boards. Tell me a bit about the key takeaways there.

Dottie Schindli...: Yeah. Let me start by saying, it is really kind of amazing that it took until 2020 for this to be, for diversity and systemic racism and police violence to be conversations at board tables. It's a little distressing to me that it took what it took for that to happen. That said, it is happening. And I don't think it's going to ever not happen. I think we're seeing more and more companies really trying to make good on some of the commitments they made over the summer. Sort of the big pronouncements about things that they were going to do to invest in communities and invest in addressing some of these systemic problems. I think there is some reason for hope. There's some reason to be encouraged.

That said, the board diversity front, I think there's still a lot of work to be done. Everybody I think would agree with that. We've been talking about board diversity for a very long time, but up until very recently, we mostly meant women. We mostly meant getting more gender diversity on boards and we didn't even mean really gender diversity. We meant women, because I think there's still a huge lack of individuals with LGBTQIA status on corporate boards. We really, we're not talking in, I would say kind of a broader way about racial and ethnic diversity and the numbers are not encouraging. It's just a very, very slim minority of board members that are people of color. It's a huge issue. And especially if you look at for example, African-American directors or Latino and

Hispanic directors, there's a huge population of Latino Hispanic people in the US for example, and just a tiny, tiny fraction of corporate leaders are people who are either Latino Hispanic.

It's really a problem. I think we've seen a lot of companies trying to address this and figure out how to do it. Diligent Institute was interested to find out what are they actually doing? Not so much, what are they saying? Or what are they thinking? But what are they actually doing? And so we joined forces with the New York Stock Exchange to conduct a survey where we asked about 250 the companies, some private, but mostly public, and we asked primarily the C-suite executives and board members of these companies about their board refreshment practices, because really kind of getting at the heart of this is to figure out what are you doing to try to build a more diverse and a more effective board to help you move forward?

What we learned was that 81% of our respondents tell us that they have either a plan for increasing boardroom diversity or they're in the process of creating one. Four out of five, tell us, "Yeah, we are definitely doing this." But we know there's a disconnect because we asked, "What's your timeframe for enacting this plan and meeting your targets?" And 45% of them told us they don't have a timeframe.

Kahlil Williams: That's not a great plan.

Dottie Schindli...: Right, yeah, yeah. A plan with no timeframe is really not actually a plan, it's an idea. It's just an idea. We also then wanted to find out, okay, what board refreshment practices are you currently using? 17% of our respondents tell us that they limit the number of boards that a director could serve on, which is one way to help with refreshment. 14% have implemented board member age limits, which unfortunately those age limits tend to be north of 75 so there's another question. And then 11% have actually board seats recently. They've added open board seats to their roster purportedly to fill those seats with a person of color, a woman, someone with LGBTQ status. However, adding board seats is not really the way out of the problem because that's not going to actually shift the overall balance. It's just going to be additive. And that's not a bad thing necessarily. It's not bad to have more diverse people joining boards.

Kahlil Williams: It could have a dilutive effect presumably.

Dottie Schindli...: Correct. Yeah, if it doesn't shift the balance, then it's not really solving the issue. That's a concern. What we were interested to find out though, was that there's sort of four strategies that we know really do have a material impact on board diversity. And those are, limiting the terms or tenure of directors. Really kind of having a time limit as opposed to an age limit. Asking people to either retire or resign if they are long tenured so opening up a seat. Creating a diverse only slate of candidates. When you have to fill your next board seat, if you are choosing from a slate of candidates that is entirely diverse, we know that that leads to a diverse director joining the board. That seems pretty obvious. And then finally setting some very specific targets. Now, in our survey, we use the word quota. What we've learned is the word quota is universally hated.

Kahlil Williams: Right. Right, it's very loaded.

Dottie Schindli...: I think we should probably let that go. Yeah, it's very loaded. I think we should just call them targets because it's the same thing. Make sure you have a target set. We learned that unfortunately these four very effective strategies are not the most popular. 8% have set some type of limit on term or tenure. 6% have asked someone to retire or resign. 4% have created diverse only slates of candidates and only 3% have set diversity quotas and they were not popular because we then asked, "What's your likelihood to implement these different strategies?" Quotas was by far the lowest ranked.

Kahlil Williams: Sure, whether by wording or for some other reason.

Dottie Schindli...: Correct. Correct. And the one that was highest ranked though, is a little bit encouraging, which is disclosing board diversity data. I think that's something we're likely to see quite a bit of in 2021. That's obviously something that is now being required by some of the exchanges. Most notably NASDAQ just released their new guidance and I think that's going to have an interesting impact. You've got some chatter happening about potentially changing the rules at the SEC around disclosure of board diversity data. I think if we can actually really understand the full scope of the problem and get that information, it will help. It doesn't solve the problem, but it does make it easier to identify the problem. And I think as we all know, the things that we measure tend to get managed. I think that is kind of table stakes, if you will. We need to do that and then we also need to do the other things, the harder things.

Kahlil Williams: Absolutely. And I do think that among companies that disclosure, sort of they say, sunshine is the best disinfectant. That there are ways in which companies being prompted to disclose certain things does make them want to make sure that the best face is on the company when they do disclose about diversity or other sorts of ESG metrics. I asked you about your predictions for 2020. You talked a bit about your ones for 21. I wonder if they've shifted at all.

We are taping this on a Wednesday at about 2:00 o'clock, where there is currently an impeachment hearing going on for the president. And one of the things that led up to that was a question about the peaceful transition of power, but more broadly, sort of ESG principle, which is political giving and whether or not companies are giving to either individuals or causes that may not sort of mesh well with their sort of core business policies. A question for you about what you're thinking in 2021, I know you mentioned climate change. It's not too late to revise. I think I'll give you till January 15 to give me your revised versions of what you think is going to happen in the ESG space. But I wonder if there's anything else apart from sustainability that you think will be driving the conversation to the green in particular?

Dottie Schindli...: Oh, well, there's going to be a lot driving conversation beyond ESG. Let's be clear. I do think that let's be honest. The thing that is at the top of every board agenda for many months to come as the pandemic. I think that's kind of an obvious answer, but it is really true and the pandemic and all of its related effects, because so many of those effects speak to ESG issues. You've got workforce issues, particularly about potentially massive unemployment. And I don't know if you noticed the last round of data from the Department of Labor, but we lost a lot of jobs in December. And unfortunately, if you look at the data, all of those jobs were lost by women and primarily women of color.

And so I feel like those issues have got to be on the minds of a lot of directors, because you think about underemployment of women is going to change the labor force so dramatically. If I'm a board member right now, I'm thinking about what is our company doing to try to help provide better supports for our employees so that we can continue to be profitable and sustainable as a business long term? These are some questions that are pretty fundamental and need to be addressed across the board, not just in individual boardrooms, but certainly I think at the governmental policy level. There's just not enough support for individual families who are trying to raise children, educate children and do jobs. There's some big issues that need to be dealt with. But if I'm a board member, I'm thinking about some of these things, because this can absolutely have a downstream impact on our profitability and our ability to grow and be a successful enterprise.

I would think there's a lot about the pandemic itself that continues to ripple outward. One just really tactical item that I think is really interesting is what happens to the boardroom itself? We saw every single board in March of 2020 suddenly become a digital board, whether they were ready for it or not, they all went online. And in all the conversations we've had with directors over the past year, what we've been hearing is that that had a lot of benefits and some challenges. The benefits, obviously you don't have to travel, much more convenient. The meetings themselves could be much more productive because people were coming better prepared so that they wouldn't be sitting on a Zoom call, for example, for three hours or longer. But that said, there are some drawbacks.

Having a deep dive, strategic level conversation is still kind of impractical in an online format. It's just, you can do it. It's just not nearly, I think, as effective or as efficient as if you're all together in a room and you have the benefit of reading the room, so to speak. The body language, getting up and moving around, having those chats as you walk down the hall to get more coffee. Sometimes that's where the magic happens is when you're not meeting. I think we're going to probably see in 2021, especially as the vaccine is in wider distribution, we're going to see a hybrid approach. I don't think we go all the way back to where we were pre-pandemic, where everything was live. I think we still have a hybrid approach. And that's probably true, not just for board meetings, but for annual general meetings, the shareholder meetings, committee meetings, for sure. And I would say probably also workforce.

Look, a lot of the workforce can't happen remote. There's a lot of jobs that you cannot do remote. I think it's something in the order of 62% of all jobs cannot be performed remotely. But those that can, I think we're going to see a lot of them being performed remotely and maybe some sort of a hybrid approach. There's a lot that directors will be talking about that ripple outward from the pandemic. And I would say systemic racism and racial justice is another big force there that ripples out from this pandemic. There's a lot on the agenda for this year.

Kahlil Williams: Well, you give us a lot to think about, but I'll close on this, which is, we talked about the pandemic and sort of, I think you're exactly right, there's a lot that still has to come from it. We don't know about the efficacy of vaccines. We don't know exactly what the trajectory of the virus is, but we know that ESG is going to be important. But as a gov tech geek, I will give the opportunity to give us one more thing, that governance issue that people are not focused on that maybe is flying under the radar a little bit that you think directors are talking about that you're hearing anecdotally, that you think may be an issue. And it maybe something that you think about all the time, but with ESG and the pandemic at the forefront, I think that some other issues are taking a back seat despite being critically important.

Dottie Schindli...: Wow, there's so many, I'm trying to think of which one might I pick and I don't know that it will be the largest issue or if it will be just a side issue. But right now I think SPACs are getting a lot of interesting attention. And so I think we're going to probably see a lot more experimentation with those kinds of shell companies for acquisition and I think just a lot more volatility in the private sector specifically. I think we're starting to see some exchanges set up around SPACs and I would expect that that trend to kind of grow in 2021, particularly because the IPO market has been so volatile and so complicated during the pandemic. We don't really know exactly when that's going to kind of settle in.

We are seeing some IPOs pickup traffic, but I would be interested to sort of keep an eye on that and see. I don't know whether that's going to be good or bad to be perfectly honest with you. I just think we're going to see more of it. And we're going to figure out what was good and what was bad about it, because it becomes much more common. That's one thing I don't know that a lot of people are really talking about yet, but I'm hearing a lot of chatter about it from board members. And I'll be interested to see where that goes.

Kahlil Williams: Well, Dottie, it's been wonderful to have you on the podcast. You are officially a friend of the pod, and as I've told you before, we really look forward to having you back again soon. Talk about some of the findings and thought leadership

	that Diligent routinely puts out. And you've just been a wonderful guest so thank you, thank you, thank you.
Dottie Schindli...:	Oh, it's been my pleasure, Kahlil. Thanks so much for having me and we'll have to return the favor and have you on the Corporate Director podcast.
Kahlil Williams:	I'm looking forward to it and I don't have to go all the way out to media. I can do it from the comfort of my office or home here in Philly, which is great. And again, thanks for your time and look forward to talking to you soon.
Dottie Schindli...:	Thank you so much.
Speaker 1:	Thanks again to Kahlil Williams and his guest Dottie Schindlinger. make sure to visit our website, www.ballardspahr.com, where you can find the latest news and guidance from our attorneys. Subscribe to the show in Apple Podcasts, Google Play, Spotify or your favorite podcast platform. If you have any questions or suggestions for the show, please email podcast@ballardspahr.com. Stay tuned for a new episode coming soon. Thank you for listening.