

SEC Rulemaking Petition Wants Information on Director Nominees' Gender, Race and Ethnicity

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A group of nine public pension fund fiduciaries has filed a [rulemaking petition](#) with the SEC to ask for new disclosure about the gender, race and ethnicity of director nominees in proxy statements, along with a discussion of those individuals' skills and experiences that the SEC rules already mandate.

Specifically, the petition asks that the current disclosure of nominee qualification and skills should be in a chart or matrix form and include additional information as to the nominee's gender, race and ethnicity. The chart is intended to convey attributes identified by the board as minimum requirements for all directors or as necessary for one or more of the directors to possess, and should be presented in XHTML format to enable aggregation across companies.

The petition criticizes existing SEC rules regarding board diversity, which asks whether the board considers diversity in identifying director candidates, how a diversity policy (if the board has one) is implemented and whether the board assesses the policy's effectiveness. Commentators have pointed out that the unintended consequence of this requirement is to cause many companies to state that they consider diversity, but do not have a diversity policy, which results in the lack of disclosure about the implementation or effectiveness of any diversity initiatives. In addition, the petition states that some companies "use such broad definitions of diversity that the concept conveys little meaning to investors," as studies have shown that many companies defined diversity in proxy statements to include general factors such as different viewpoints or perspectives from directors.

The petition notes that investors who care about gender, racial and ethnic diversity among board members find it difficult to obtain information from proxy statements and must conduct their own investigation, which could be "fraught with inaccuracies." Enhanced diversity disclosure is required in several foreign jurisdictions, including Australia, Canada, Singapore and Europe, although in several cases the focus is limited to gender diversity.

According to the petition, since the 2010 amendments to the SEC disclosure rules on director nominees' skills, qualifications and considerations of diversity by boards, "evidence shows no meaningful increase in diversity on corporate boards." That year the percentage of women and minority directors on Fortune 500 companies was 25.5%, and two years later, in 2012, the percentage was 26.7%.

The petition is signed by CalPERS, CalSTRS, both the New York City and State Comptrollers, and corresponding representatives from Washington state, Connecticut, Illinois, Ohio and North Carolina.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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