

THE
NATIONAL LAW REVIEW

SEC Issues New Guidance on Diversity Disclosure Requirements

Monday, February 11, 2019

On February 6, 2019, the Securities and Exchange Commission released two Compliance and Disclosure Interpretations (CDIs) discussing disclosure requirements in instances where a director or board nominee self-identifies specific diversity characteristics, such as race, gender, ethnicity, religion, nationality, disability, sexual orientation and cultural background.

Item 401(e) of Regulation S-K requires “a brief discussion of the specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director.” Item 407(c)(2)(vi) of Regulation S-K requires disclosure of how a company’s board (or nominating committee) implements policies that it follows with regard to the consideration of diversity in identifying director nominees.

In new CDIs Questions [116.11](#) and [133.13](#), the SEC stated that, to the extent the board or nominating committee, in determining the specific experience, qualifications, attributes, or skills of an individual for board membership, considered any such self-identified diversity characteristics of a director who consented to the disclosure of those characteristics, they would expect the company to identify those characteristics and discuss how they were considered. The SEC also stated that they expect that any description of diversity policies followed by the company would include a discussion of how the company considers the self-identified diversity attributes of a nominee, as well as any other qualifications its diversity policy takes into account, such as diverse work experiences, military service, or socio-economic or demographic characteristics.

While the SEC does not define diversity, permitting companies to define it in ways they consider appropriate, all public companies should be prepared to be more transparent in their diversity discussions in their SEC filings.

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