
THE NEW PROXY RULES IMPACT ON DIRECTOR QUALIFICATIONS AND DIVERSITY OF THE BOARD

The enhanced proxy rules recently adopted by the SEC require added disclosure in the proxy materials for the 2010 annual meeting regarding the background and qualifications of directors and nominees and the diversity of the board.

Director Qualifications

Added disclosure regarding director/nominee qualifications is now required in an effort to provide investors with more meaningful information about directors and nominees so investors can make better informed voting decisions. For each director/nominee, the experience, qualifications, attributes or skills that led the company to select the director or nominee for the board should be described in the proxy materials. The rules do not provide the specific information that should be considered leaving it to each company to identify what skills would best benefit that particular company. Factors that may be considered include relative industry experience, leadership experience, risk management experience, and other relevant professional experience. In addition, "soft skills," such as whether a director is insightful or probing, may also be a consideration.

When evaluating director qualifications, the board and nominating committee need to focus on the skills that are essential to the board as a whole. The board and each committee must evaluate whether the company's corporate governance guidelines and/or committee charters require consideration of specific factors when determining whether to recommend a nominee. In connection with this, the board and nominating committee must be alert to the needs of the entire board considering such things as the performance and contribution of fellow directors as well as the qualifications of proposed new directors.

Practically, the nominating committee might consider developing a matrix outlining skills the board currently requires, how current directors fill those needs and what skills the board may need going forward. The company must be prepared to tell their story and explain why their board is composed of the individuals chosen to serve. It will be very important how this information is developed and disclosed in the proxy materials so that no director is established as a target for shareholder activism or a withhold/against vote campaign.

Recommended Actions:

- *Understand board composition as a whole and review at least annually*
- *Understand how director/nominee qualifications meet with company and board needs*
- *Consider how to describe the qualifications of each director/nominee*
- *To the extent necessary, seek updated CVs from director/nominees to ensure the board has current information as to the skill sets and qualifications of each director/nominee*

- *Revise the Directors and Officers Questionnaire to elicit further information as to the qualifications of director/nominees*
- *Encourage directors to review relevant proxy disclosure when available to ensure accuracy of the disclosure*
- *Review corporate governance guidelines to determine whether revisions are needed*

Board Diversity

The recently adopted rules further require expanded disclosure regarding whether the board considers diversity in the nomination process, if the company has a policy regarding diversity, and, if so, the board's assessment of the effectiveness of the policy. The term "diversity" has not been defined in the new rules instead allowing each company to determine what constitutes diversity as applicable to their business. The SEC points out that diversity might encompass broad ideas such as "differences of viewpoint, professional experience, education, skill and other qualities or attributes that contribute to board heterogeneity" or such things like race, gender and national origin.

Again, company's should review their governance guidelines and committee charters to see whether they specifically address diversity. The board needs to consider what factors are applicable in determining diversity and whether and how diversity has been considered in the nominating process. In addition, the board should consider whether it has, in effect, a diversity policy and if so, be able to describe the implementation of the policy and assess its effectiveness.

Recommended Actions:

- *Develop basis for disclosure*
 - *Define diversity*
 - *Analyze current practices regarding diversity*
 - *Determine whether or not a policy exists and if one does, assess its effectiveness*
 - *Review and consider revising governance guidelines and committee charters*

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