

Securities Regulation Daily Wrap Up, DIRECTORS AND OFFICERS— New CorpFin Regulation S-K C&DIs offer guidance on board diversity disclosures, (Feb. 6, 2019)

Securities Regulation Daily Wrap Up

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The SEC's Division of Corporation Finance issued two new C&DIs that suggest how companies should handle disclosures regarding the consideration of self-identified director diversity characteristics.

Companies may need to do more to meet their disclosure obligations regarding the self-identified diversity characteristics of director nominees who have agreed that the company can disclose these characteristics about them, according to a pair of new C&DIs issued by the SEC's Division of Corporation Finance. The C&DIs note that self-described diversity characteristics can include "race, gender, ethnicity, religion, nationality, disability, sexual orientation, or cultural background." CorpFin's [new mirror image C&DIs](#) (Questions 116.11 and 133.13) are its first issued since the federal government reopened and provide guidance to companies regarding how to apply Items 401 and 407 of Regulation S-K.

Under Item 401 of Regulation S-K, a company must provide a description of director nominees' backgrounds. The C&DIs explain that this description should cover a variety of items, including "specific experience, qualifications, attributes, or skills." Under the new C&DIs, the Item 401 disclosure should, at minimum, identify self-identified diversity characteristics and state how they were considered by the nominating committee or by the board.

Item 407(c)(2)(vi) of Regulation S-K requires a description of a company's process for nominating and evaluating director candidates. As part of that disclosure, a company must explain whether and how it considers diversity in identifying directors. A company must further describe how its diversity policy is implemented and how it judges the policy's effectiveness.

The new C&DIs state that, for purposes of Item 407(c)(2)(vi) of Regulation S-K, a company should explain how it considered self-identified diversity characteristics under its diversity policy. That discussion also should note how the company considered other factors within the scope of its diversity policy, including "diverse work experiences, military service, or socio-economic or demographic characteristics."

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