

[Securities Regulation Daily Wrap Up, TOP STORY—Lawmakers to introduce mirror image corporate diversity bills, \(Feb. 7, 2019\)](#)

Securities Regulation Daily Wrap Up

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The bills advocated by Sen. Menendez (D-NJ) and Rep. Meeks (D-NY) come as diversity issues gain traction, including new SEC guidance and California's law. Senator Menendez said his own study of big companies shows a need for greater "representational diversity."

Senator Robert Menendez (D-NJ) and Rep. Gregory Meeks (D-NY) plan to introduce mirror image bills that would require public companies to disclose data on diversity. The bills are predicated, in part, on a 2017 survey Sen. Menendez conducted in which 61 of the Fortune 100 companies participated and which, in the senator's view, showed a need for greater diversity among corporate leadership teams. The bills also come at a time when the need to address diversity issues has become more imminent, for example, under California's board diversity law. The SEC also recently issued new Compliance and Disclosure Interpretations (C&DIs) on self-identified diversity characteristics.

"Representational diversity." According to Sen. Menendez, the Improving Corporate Governance Through Diversity Act of 2019 (S. 360) and its House counterpart (H.R. 1018) would address the results of the senator's [2017 Corporate Diversity Survey](#). That survey, the senator said, indicated a need for greater "representational diversity." This need is underscored by two trends Sen. Menendez said he sees going forward: (1) an increasingly diverse America; and (2) lagging minority representation in fields likely to see the most growth in the coming years, such as technology and professional fields.

"This bill provides a way forward to promote transparency in corporate America, while highlighting the need for further accountability by companies like the Fortune 100s I have surveyed in the past," said Sen. Menendez. "As our country undergoes tremendous demographic and economic change, it is time the leaders of America's most successful companies recognize that diversity is not just a buzzword—it's a deliverable."

According to press releases issued by [Sen. Menendez](#) and [Rep. Meeks](#), the proposed legislation would mandate disclosure by public companies of information on the composition of company boards and company executives. For example, the required information would relate to the racial, gender, and ethnic composition of company leaders. Representative Meeks said another dimension would be the veteran status of board nominees and executives. As of publication, the bill text was unavailable.

"Diversity has been proven to have a positive impact on business performance, and it is only natural for investors to want to know which companies are choosing to bring in a wealth of different perspectives into their corporate board rooms," said Rep. Meeks.

The legislation has early backing from several major business groups. The U.S. Chamber of Commerce [said](#) the legislation would "organically" increase board diversity without reliance on quotas while also promoting transparency and creating a private sector advisory group. The Council of Institutional Investors said in a [letter](#) that the proxy disclosures required by the legislation would align with the CII's own policies on board diversity, which look to a number of factors, including "background, experience, age, race, gender, ethnicity, and culture."

C&DIs and California. Issues surrounding board diversity have been gaining increased attention. Companies, for example, 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 yesterday by the SEC's Division of Corporation Finance.

Questions 116.11 and 133.13 provide guidance to companies regarding how to apply Items 401 and 407 of Regulation S-K regarding board qualifications and diversity policies.

California's board diversity law has generated much interest and concern regarding how companies will comply and whether it can withstand potential legal challenges. The law requires certain companies to have at least one female director on their boards. ISS recently [predicted](#) that the law would result in a significant increase in women directors at California-based companies.

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