

## The SEC's Proxy Disclosure Enhancements Rule and Diversity in the Director Nomination Process

- Among many changes to the disclosures provided by publicly traded companies, the SEC's 2009 Proxy Disclosure Enhancements Rule<sup>1</sup> requires publicly traded companies to provide additional disclosure on whether, and if so how, their corporate board or nominating committee considers diversity in identifying director nominees.
- In addition, if the company has a policy regarding the consideration of diversity in identifying director nominees, the company must disclose how this policy is implemented, as well as how the company assesses the effectiveness of its policy.
- This enhanced disclosure, required under Item 407(c)(2)(vi) of Regulation S-K<sup>2</sup>, is required to be included in a company's Definitive Proxy Statement (also referred to as "Form DEF 14A") when directors are being elected. Therefore, if there are no directors up for election during the period covered by that proxy statement, the diversity information need not be disclosed.
- Recognizing that companies may define diversity in various ways reflecting different perspectives, the SEC did not define diversity under the Proxy Disclosure Enhancements Rule. Companies are allowed to define diversity in ways that they consider appropriate.<sup>3</sup>
- The SEC's EDGAR database<sup>4</sup> provides free public access to corporate information filed with the SEC, including definitive proxy statements (Form DEF 14A). Most companies also make their proxy statements available on their websites.
- On the whole, companies are becoming more cognizant of board diversity and are disclosing in greater detail how they determine their nominees and directors. Investors and advocacy groups also continue to support increased corporate board diversity.<sup>5</sup>

---

<sup>1</sup> The SEC's 2009 Proxy Disclosure Enhancements Rule was effective as of February 28, 2010 for most publicly traded companies with fiscal years ending on or after December 20, 2009. The final rule is available at 74 Fed. Reg. 68334 (Dec. 23, 2009), <http://www.gpo.gov/fdsys/pkg/FR-2009-12-23/pdf/E9-30327.pdf>.

<sup>2</sup> The enhanced disclosure requirements are required by Item 407(c)(2)(vi) of Regulation S-K, 17 CFR 229.407, (Item 407) Corporate Governance. Regulation S-K can be accessed through the Corporation Finance section of the SEC's website at <http://www.sec.gov/divisions/corpfin/ecfrlinks.shtml>.

<sup>3</sup> Proxy Disclosure Enhancements, 74 Fed. Reg. 68334 (Dec. 23, 2009) at page 68344, available at <http://www.gpo.gov/fdsys/pkg/FR-2009-12-23/pdf/E9-30327.pdf>.

<sup>4</sup> For instructions on using the SEC's EDGAR database and to search company filings, go to <http://www.sec.gov/edgar/searchedgar/webusers.htm>.

<sup>5</sup> For example, see Calvert Investments, Inc., *Examining the Cracks in the Ceiling: A Survey of Corporate Diversity Practices of the S&P 100*, March 2013, available at <http://www.calvert.com/nrc/literature/documents/br10063.pdf?litID=BR10063>, and The Thirty Percent Coalition, Press Release, *Institutional Investors file Shareholder Resolutions Encouraging Diversity in Company Charter*

**Item 407(c)(2)(vi) of Regulation S-K**

Item 407 -- Corporate Governance

c. Nominating committee.

....

2. Provide the following information regarding the registrant's director nomination process:

....

- vi. Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder, and whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director. If the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, describe how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy;

Examples of 2011 Form DEF 14A disclosures that meet the requirements of Item 407(c)(2)(vi) of Regulation S-K are below. Note the differences in the level of disclosure provided.

Ameriprise Financial

Our Board of Directors does not have a formal written policy with regard to the consideration of diversity in identifying director nominees. Our Corporate Governance Guidelines, however, require the Board's Nominating and Governance Committee to review the qualifications of the directors and the composition of the Board as a whole periodically. This assessment includes not only the independence of the directors, but consideration of required minimum qualifications, diversity, age, skills, and experience in the context of the needs of the Board. Our Corporate Governance Guidelines provide that the Board will establish the number of directors based on the recommendations of its Nominating and Governance Committee, which will consider, among other factors: the Board's current and anticipated need for directors with specific qualities, skills, experience or backgrounds; the availability of highly qualified

---

*Language and in the Corporate Boardroom*, February 28, 2013, available at <http://www.30percentcoalition.org/news/97-institutional-investors-file-shareholder-resolutions>.

candidates; committee workloads and membership needs; and anticipated director retirements.

United States Steel Corp.

In evaluating diversity, the Committee considers not only racial and gender diversity, but also the need for a Board that represents diverse experience at policy making levels in business, government and education and in industries that are relevant to the Corporation's business operations. The director selection criteria described above, including diversity, are evaluated by the Committee each time a new candidate is considered for Board membership. In addition, at the end of each year, the Board of Directors conducts a thorough self-evaluation of its performance. This evaluation includes an assessment of whether the Board (i) has the appropriate mix of skills, experience and other characteristics, and (ii) is made up of a sufficiently diverse group of people (in terms of age, background, experience, gender and race). The biography of each nominee for election and each Continuing Director on pages 21-27 of this proxy statement includes a discussion of the attributes that each brings to the total mix of skills and experience of the Board.

Fortune Brands

The Nominating Committee first considers a candidate's management experience and then considers issues of judgment, background, stature, conflicts of interest, integrity, ethics and commitment to the goal of maximizing stockholder value when considering director candidates. The Nominating Committee also focuses on issues of diversity, such as diversity of gender, race and national origin, education, professional experience and differences in viewpoints and skills. The Nominating Committee does not have a formal policy with respect to diversity; however, the Board and the Nominating Committee believe that it is essential that the Board members represent diverse viewpoints. In considering candidates for the Board, the Nominating Committee considers the entirety of each candidate's credentials in the context of these standards.

Alcoa Inc.

Our policy on board diversity relates to the selection of nominees for the board. Our policy provides that while diversity and variety of experiences and viewpoints represented on the board should always be considered, a director nominee should not be chosen nor excluded solely or largely because of race, color, gender, national origin or sexual orientation or identity. In selecting a director nominee, the Governance and Nominating Committee focuses on skills, expertise or background that would complement the existing board, recognizing that the company's businesses and operations are diverse and global in nature. Reflecting the global nature of our business, our directors in 2010 were citizens of the United States, France, Germany, India and Mexico. We have three female directors, one African-American director and one Hispanic director out of a total of 11 directors, as of the date of this proxy statement. Our directors come from diverse backgrounds including industrial, non-profit and governmental.