Pension Funds Ask SEC for Board Diversity Rule

Joe Mont | April 1, 2015

Nine large public pension funds, which collectively supervise the investment of over $1.12 trillion in assets, are petitioning the Securities and Exchange Commission for additional disclosure requirements related to corporate board diversity. In a joint letter to the Commission, the funds urged the SEC and its commissioners to adopt a rule requiring corporate disclosure of board nominees' gender, racial, and ethnic diversity, as well as their "mix of skills, experiences, and attributes."

"As large institutional investors, we have a real interest in electing a slate of board nominees who are well-positioned to help carry out a company's business strategy and meet our long-term investment needs," the letter says. "We believe better disclosure about the board's skills, experiences, gender, race, and ethnic diversity can help us as investors determine whether the board has the appropriate mix to manage risk and maximize value."

The proposal seeks to expand upon current Regulation S-K requirements that registrants identify the minimum skills, experiences, and attributes that all board candidates and nominees are expected to have. Because Rule S-K does not define diversity, some companies "have used such broad definitions of diversity that the concept conveys little meaning to investors," the letter says.

The requirement currently reads: "Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess."

The proposal would add an additional sentence: "When the disclosure for this paragraph is presented in a proxy or information statement relating to the election of directors, these qualities, along with the nominee's gender, race, and ethnicity should be presented in a chart or matrix form." The proposal seeks to have this data presented in XTML or other electronic formats that allow it to be easily aggregated.

"Although some corporations provide aggregate board diversity information, board level diversity is not available for all companies, and individual director diversity attributes, which are necessary for investors to fully exercise their voting rights, are not reported," the letter says. "As a result, investors who care about gender, racial, and ethnic diversity must do their own investigation. Such collection of information about race and ethnicity of directors can be time consuming, expensive, and fraught with inaccuracies."

The funds also emphasized the potential financial risk for corporations when their governing boards lack diversity. The letter cites an International Monetary Fund report that blamed a "high degree of groupthink" for its failure to correctly identify risks leading up to the worldwide financial crisis.

Signing the letter were several state treasurers and representatives of the Illinois State Board of Investment; Ohio Public Employees Retirement System; North Carolina Retirement Systems; (New York State Common Retirement Fund; Connecticut Retirement Plans and Trust Fund; California State Teachers' Retirement System; California Public Employees' Retirement System; and the Washington State Investment Board.