



Client Alert

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SEC Adopts New Disclosure Requirement for Public Companies Regarding Diversity Policies in the Selection of Directors

On December 16, 2009, the Securities and Exchange Commission (SEC) adopted final rules to expand the proxy statement disclosure requirements for companies registered with the SEC. Included in the final rules were requirements regarding diversity practices in the selection of directors to serve on the boards of those companies.

Each company must disclose whether, and if so how, its nominating committee or board of directors considers diversity in identifying nominees for director positions. If the nominating committee or the board has a policy with regard to the consideration of diversity in the nomination of directors, disclosure is required of how the policy is implemented, as well as how the committee or board assesses the effectiveness of the policy. Diversity is not defined in the rules, and each company is allowed to define diversity using its own perspective. The SEC noted that some companies may view diversity expansively, to include factors such as differences in viewpoint, professional experience, education, skill and other qualities or attributes, while others may focus on such diversity issues as race, gender and national origin.

Existing diversity policies will need to be reviewed for consistency with current practice and perceived effectiveness. There may be diversity guidelines or objectives included in the company's corporate governance policies rather than as a stand-alone policy. Those items may be subject to the new disclosure rules, and should be reviewed with counsel.

The rules do not require companies to adopt a formal diversity policy, and we are not recommending that companies adopt a policy solely in response to the new rules. However, each company should take this opportunity to evaluate its progress in developing such a policy and consider whether now is the time complete the process. Even if a company does not adopt a formal policy, the board should consider the company's response to the new requirements. In addition, in preparing the proper disclosures, the board should consider the effect of the disclosure on the company's overall diversity practices and recruiting efforts.

The new rules are effective February 28, 2010.

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