

SEC Diversity Assessment Reports on Policies and Practices for Investment Advisers, Private Fund Advisers, Broker-Dealers and other SEC Regulated Entities

Recently, the Securities and Exchange Commission's Office of Minority and Women Inclusion ("OMWI") released its [Diversity Assessment Report](#) for regulated entities, including investment advisers, private fund advisers and broker-dealers. The Diversity Assessment Report is designed to: (1) help guide a regulated entity's self-assessment of its diversity policies and practices using the Joint Standards (as such discussed below); and (2) provide the regulated entity with a template for submitting diversity assessment information to the SEC's OMWI Director. Although the self-assessments and reports are currently voluntary, diversity and inclusion ("D&I") is becoming a due diligence focus as institutional investors and other industry participants are pushing for greater D&I. Even if the SEC's OMWI Director does not ask for a report, be prepared for requests from your clients and private fund investors.

Related Capabilities

- Investment Management
- Securities & Financial Services Litigation & Enforcement

Background

The SEC's OMWI is one of six federal agency offices established under Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") responsible for all matters of their respective agencies relating to diversity in management, employment, and business activities.¹ Pursuant to the Dodd-Frank Act, the SEC OMWI was required to work with the other five federal agencies to develop standards for assessing the diversity policies and practices of entities regulated. In 2015, the Agencies issued a [Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies](#). To be clear, the Policy Statement is only a general statement of policy under the Administrative Procedure Act and does not create new legal requirements.

The Policy Statement provides a framework for regulated entities to create and strengthen diversity policies and practices, including its (1) organizational commitment to D&I, (2) workforce profile and employment practices, (3) procurement and business practices (supplier diversity), (4) practices to promote transparency of organizational D&I and (5) self-assessment. The framework sets standards in each of these areas (the

“Joint Standards”). The Joint Standards are meant to apply to U.S. operations of regulated entities with more than 100 employees,² but will be helpful for smaller entities. All entities must tailor their policies and procedures to appropriately consider their size and unique characteristics, such as workforce size, governance structure, total assets, and geographic location. According to the Policy Statement, the Agencies believe entities that have successful diversity policies and practices allocate time and resources to monitoring and evaluating performance under their diversity policies and practices on an ongoing basis.

In addition to releasing the SEC Diversity Assessment Report, the OMWI has also released [Frequently Asked Questions](#) to give additional guidance regarding the Policy Statement and the Joint Standards (“FAQs”).

Diversity Assessment Report

The SEC’s Diversity Assessment Report consists of two sections—Section I is an Assessment of Diversity Policies and Practices and Section II is a Diversity Profile of the Regulated Entity. The SEC Diversity Assessment Report should be completed by the following regulated entities³:

• Brokers-Dealers	• Investment Advisers
• Investment Companies (Mutual Funds)	• Transfer Agents
• Municipal Advisors	• Private Fund Advisers
• Clearing Agencies	• Nationally Recognized Statistical Rating Organizations
• National Securities Exchanges	• Other Self-Regulatory Organizations (such as, the Financial Industry Regulatory Authority and Municipal Securities Rulemaking Board)

As with the Joint Standards, the SEC intends the form Diversity Assessment Report to be used for regulated entities with more than 100 employees, but smaller entities are welcome to use the same form. Entities are not required to use this form and all using it should tailor it to meet their unique characteristics. The Joint Standards suggest entities conduct a self-assessment at least on an annual basis.

In addition to inquiring as to the regulated entities’ employees, the Diversity Assessment Report also solicits information on the entities’ suppliers and the specific steps the entities have taken to promote a diverse supplier pool. The Diversity Assessment Report also requests entities to provide the percentage with minority-owned and women-owned businesses compared to the total procurement spend with all vendors and suppliers.

Use of Information

According to the Policy Statement, the Agencies may use information submitted to them to monitor D&I progress and trends in the financial services industry. Additionally, the Agencies may share information with each other to support coordination of efforts and may publish information disclosed to them, such as best practices, in any form that does

not identify a particular entity or individual or disclose confidential business information.

Voluntary Reporting

As stated above, the Diversity Assessment Report is voluntary. Pursuant to the Policy Statement, entities are encouraged to disclose their diversity policies and practices, as well as information related to their assessments, to the Agencies and the public. In fact, providing information pertaining to the self-assessments of its diversity policies and practices to the OMWI Director is one of the Joint Standards set forth in the Policy Statement. Upon an email request by the SEC's OMWI Director, entities may submit the SEC's Diversity Assessment report by completing and submitting the Diversity Assessment Report online, using Novi Survey, a secure web portal. However, entities submitting information considered sensitive and confidential business information may request confidential treatment pursuant to the Freedom of Information Act. According to the FAQ, the SEC's OMWI expects to collect diversity assessment information from SEC-regulated entities no more frequently than every two years and will provide entities 60 days to complete each report.

As also stated above, entities should be prepared for clients and private fund investors to request information regarding Diversity Assessment Reports as part of their initial and ongoing due diligence process. Entities sharing information with third parties may wish to do so pursuant to a nondisclosure agreement. On the contrary, some entities may find that making positive D&I information publicly available could be beneficial to their business.

Additional Resources

To stay informed of more investment management developments and events, we invite you to join Dorsey & Whitney LLP's [Investment Management Group newsletter](#) and follow us on social media. On February 28, 2018, we will be hosting 100 Women in Finance members for a conversation on *Finding the Perfect Nonprofit Board Position*. For more information on the event, please contact [100 Women in Finance](#). For more information on Dorsey's Investment Management Group, please contact Genna Garver at (212) 415-9341 (email: garver.genna@dorsey.com; twitter: [@genna_garver](#)).

¹ The five other agencies include the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Bureau of Consumer Financial Protection (collectively, the "Agencies").

² Entities with more than 100 employees are required by Title VII of the Civil Rights Act of 1964 to collect data on employment diversity and file an Employer Information Report (EEO-1 Report) with the Equal Employment Opportunity Commission (EEOC).

³ Note, the SEC does not consider publicly-traded companies to be "regulated entities" under Section 342 of the Dodd-Frank Act.