

When It Comes to Self-Identified Diversity: Trust But Verify

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On February 6, 2019, the SEC's Division of Corporation Finance released Compliance and Disclosure Interpretations (identical [Questions 116.11 and 133.13](#)) advising companies on how they should disclose directors' self-identified specific diversity characteristics (such as race, gender, ethnicity, religion, nationality, disability, sexual orientation or cultural background) in proxy statements.

In brief, Corp Fin would expect the company's discussion of directors' experience, qualifications, attributes or skills pursuant to Item 401(e) of Regulation S-K to identify these self-identified diversity characteristics to the extent that they were considered by the nominating committee, and the individual director consented to the disclosure of those characteristics.

Similarly, in these circumstances, the description of how a board implements any policies it follows with regard to the consideration of diversity in identifying director nominees under Item 407(c)(2)(vi) should include a discussion of how the company considers self-identified diversity attributes.

With board diversity at an increasing premium, and an expanding definition of diversity, self-identified diversity is likely to become a more frequent practice during the director recruitment and nomination process. Particularly in ambiguous circumstances, those companies that rely on self-identification without a more thoughtful examination of a director candidate's historic affiliations and their engagement in the claimed communities, and without consideration of the diversity of thought or perspective that the candidate is ultimately expected to contribute, will do so at their own hazard and at the candidate's hazard, as suggested by Elizabeth Warren's unfortunate claim to Native American ancestry based on 1/64 to 1/1024 ancestry and the ensuing backlash.

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