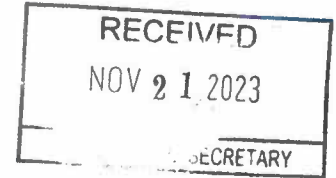


THOMAS P. DiNAPOLI
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November 7, 2023

The Honorable Gary Gensler, Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: RIN: 3235-AL9 (Corporate Board Diversity) & 3235-AM88 (Human Capital Management)

Dear Chair Gensler:

I write as Trustee of the New York State Common Retirement Fund ("Fund"), which is one of the largest public pension funds in the United States, with an estimated \$254.1 billion in assets under management as of June 30, 2023. The Fund holds and invests the assets of the New York State and Local Retirement System on behalf of more than 1.2 million members and beneficiaries and pays over \$1 billion per month in benefits. The Fund's public equities portfolio includes thousands of public companies and represents over 44% of the Fund's total portfolio. The U.S. public equities allocation primarily tracks broad passive indexes.

I urge the Securities and Exchange Commission ("Commission") to, as soon as practicable:

- 1) Propose a rule for comment on human capital management that includes disclosure of diversity data based on EEO-1 categories; and
- 2) Propose a rule for comment on board diversity that includes disaggregated diversity data gathered from voluntary disclosures. I recommend that the categories mirror the Nasdaq Listing Standards Rule with the addition of disability as a category.

Because of the link between diversity and returns to shareholders, the Fund regularly engages portfolio companies to encourage them to follow best practices for building diversity and disclosing data and policies. Recently, I have called on the Fund's portfolio companies to urgently refocus on ensuring a robust corporate culture of diversity and inclusion, at both the board level and throughout their workforce. The Fund bases some proxy voting decisions on diversity data or lack of disclosure thereof.

Human Capital Management Rule

This letter also follows up on my request for rulemaking on human capital management made with the Human Capital Management Coalition¹ and my support² for the Working Group for Accounting for Human Capital Management Disclosure's Petition.³

The Fund agrees with the Commission's Investor Advisory Recommendation,⁴ which states:

Employees are a key source of value, and investors need to understand companies' efforts to identify and develop new sources of talent. Diversity disclosures provide insight along these lines. Empirical research shows the value of diversity across countries, especially diversity among senior leadership and management, perhaps due to the benefits of diversity in decision making. Data on diversity at all levels allows investors to evaluate a firm's talent pipeline and effectiveness of DE&I efforts.

Such disclosure would not be burdensome on issuers. All companies with over 100 employees collect and file diversity data, as mandated by the Department of Labor in EEO-1 Reports. But the EEO-1 Reports are not public. When companies do disclose workforce diversity data voluntarily, it is often incomplete, inconsistent, or not easily comparable with other companies.

Board Diversity

The Fund has long regarded board diversity as a critical measure of sound corporate governance integral to the long-term success of our portfolio companies and has been requesting disclosure rules for many years.⁵ Research has shown that the ability to draw on a wide range of perspectives and experiences is a vital component of a company's sustained success in the global marketplace.

The renewed focus on diversity has also been paired with strong investor interest in reliable and comparable data on diversity throughout a company's organization. Investors currently face a lack of standardized disclosure around board diversity, due to inaction by critical market participants, including the Commission and self-regulatory organizations. Under the Commission's current principles-based disclosure regime, board diversity data—if it is disclosed at all—is often not decision-useful because of comparability issues or a lack of consistency over time. For example, the Fund uses board diversity data in its proxy voting decisions. While there are third-party providers of board diversity data, their information would be more accurate and reliable if it were obtained directly from the issuer.

A Board Diversity Rule would also provide transparency in our national market system and promote a free and open market that protects investors.

¹ <https://www.sec.gov/files/rules/petitions/2017/petn4-711.pdf>

² <https://www.sec.gov/comments/4-787/4787-20134852-305979.pdf>

³ <https://www.sec.gov/files/rules/petitions/2022/petn4-787.pdf>

⁴ <https://www.sec.gov/files/20230914-draft-recommendation-regarding-hcm.pdf>

⁵ <https://www.sec.gov/comments/s7-18-16/s71816-3.pdf>

Conclusion

The current board diversity and human capital management disclosure framework is insufficient for investors. New rulemaking would provide investors with vital board and employee diversity information about listed companies to assist in investment-related decisions. It would provide significant benefits without imposing significant costs on companies.

I urge the Commission to put a Rule on Human Capital Management and Board Diversity out for comment as soon as practicable.

Sincerely,



Thomas P. DiNapoli
State Comptroller

cc: The Honorable Caroline A. Crenshaw
The Honorable Jaime Lizáragga
The Honorable Hester M. Peirce
The Honorable Mark T. Uyeda