

Statement on the Proposed Interagency Policy Statement to Establish Standards to Assess the Diversity Policies and Practices of Regulated Entities

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Today, the Commission in conjunction with other regulators¹ issued a *Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment* (the “Proposed Policy Statement”)² as an effort to further implement Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).³ Section 342 is the provision that establishes the Office of Minority and Women Inclusion (“OMWI”) at federal financial regulators and charges this office with all agency matters relating to diversity in management, employment, and business activities. One requirement of Section 342, Section 342(b)(2)(C) of the Dodd-Frank Act, mandates that the agencies’ respective OMWI offices develop standards to assess the diversity policies and practices of entities that they regulate.

The standards set forth in the Proposed Policy Statement and the accompanying assessments are needed, and should be fully implemented to facilitate a diverse workforce. Based on available data, it is apparent that entities regulated by the SEC can do much more in this area.⁴ The issue of ensuring opportunity for all regardless of race, gender, ethnicity, or national origin is a goal that I have worked toward for my entire career and, as the statistics demonstrate, there is still much more to be done.

The need for diversity and inclusion in the workplace is especially critical in the areas of recruitment, retention, and promotion of minorities and women. Data collected by the U.S. Equal Employment Opportunity Commission (“EEOC”) shows that minorities and women continue to be underrepresented at the executive and senior level positions in the financial sector.⁵ According to this data, although white men constitute only 31% of the total workforce, they account for 65% of the executive and senior level positions.⁶ By contrast, minorities and women constitute 29% and 59% of the total workforce, respectively, but minorities and women account for only 10% and 29% of the executive and senior level positions.⁷

Clearly, the entities we regulate can—and must—do better in their diversity and inclusion policies and practices.

* The views expressed by Commissioner Luis A. Aguilar are his own and do not necessarily reflect the views of the U.S. Securities and Exchange Commission (“Commission” or “SEC”), his fellow Commissioners, or members of the staff.

There is great benefit that arises from a more diverse workforce. For example, a study has shown that a diverse workforce results in diversity in thinking.⁸ This study also shows that these differences help organizational performance because people from different backgrounds have different “tools” or “varying ways of looking at problems.”⁹ This study states that the sum of these tools is far more powerful in organizations with diversity.¹⁰ Indeed, in 2011, 85% of the largest global enterprises surveyed agreed that diversity is a key driver of innovation in the workplace.¹¹

Section 342 of the Dodd-Frank Act is designed to promote transparency and awareness of the diversity policies and practices of regulated entities in the areas of employment, business, and procurement. To achieve this statutory goal, the Proposed Policy Statement provides a set of joint standards to assess the diversity policies and practices of regulated entities. These standards focus on the following areas:

- Organizational Commitment to Diversity and Inclusion;
- Workforce Profile and Employment Practices;
- Procurement and Business Practices – Supplier Diversity; and
- Practices to Promote Organizational Transparency of Organizational Diversity and Inclusion.

Although Section 342 clearly requires OMWI directors to develop standards for assessing the diversity policies and practices of regulated entities, the statute is less clear as to *who* should conduct these assessments. The Proposed Policy Statement provides an approach that relies on *voluntary* self-assessments by regulated entities, *voluntary* disclosure of these self-assessments to the SEC and other regulators, and *voluntary* display of diversity information on public websites. Under this completely volitional approach, companies would not be required to take any specific proactive steps to enhance diversity in their workforce. Although Section 342 does not mandate that the assessment of a company’s diversity policies and practices be made voluntary, Section 342 also does not expressly require companies to take “any specific action based on the findings” of any assessment.¹² The goal of increasing workforce diversity will only be achieved if companies take proactive steps to promote their diversity and inclusion programs.

Accordingly, it is my hope that companies will utilize the standards outlined in the Proposed Policy Statement, act in good faith to conduct effective self-assessments, and use the information collected to enhance and promote their organizations’ diversity and inclusion programs. It is important to create a baseline effort so that entities and the industry as a whole will be able to chart improvement as intended by the law.

Because of the great benefits that can be derived from a diverse workforce, it is important that the final Policy Statement is as effective as possible in promoting transparency and awareness of diversity efforts at regulated entities. To that end, the proposal includes several questions to solicit public comments on how best to move forward. I urge the public to submit their comments to improve upon the Proposed Policy Statement. In addition, it would also be informative and helpful to obtain commenters’ views on the following additional questions that were not included in the Proposed Policy Statement:

- Should other types of assessment methodologies be considered in addition to self-assessments—such as (1) surveys that require companies to respond to specific questions about their diversity and inclusion programs; (2) a mandatory submission of a regulated entity’s materials regarding its diversity and inclusion program; or (3) requiring regulated entities to submit detailed diversity and inclusion annual reports describing specific actions taken to address diversity and inclusion at their organizations?
- Should an agency utilize site visits or otherwise exercise its examination and supervisory powers in connection with the standards and assessments set forth in the Proposed Policy Statement?

These questions are important because we need to know (1) whether a self-assessment approach is sufficient to achieve the goals of Section 342; (2) whether other forms of assessment methodologies would be more effective in achieving the goals of Section 342; and (3) whether the SEC should use its examination and supervisory powers to encourage compliance with Section 342 and the standards set forth in the Proposed Policy Statement. The comments we receive are critical to ensuring that the final version of the Policy Statement will be robust and fulsome. A strong policy will go a long way in encouraging regulated entities to take actionable steps that will transform their workforce into a workforce that represents the America we live in.

It is clear to me that the SEC, its fellow regulators, and its regulated entities must take proactive actions to promote diversity and inclusion in the workplace. By doing so, companies and other organizations will benefit from the contributions of women and minorities, and this will in turn help grow our economy and our nation.

¹ These regulators are 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 Consumer Financial Protection Bureau.

² *Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment*, Release No. 34-70731 (October 23, 2013), available at <http://www.sec.gov/rules/policy/2013/34-70731.pdf>.

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010).

⁴ The same can be said about my own agency, the SEC. For example, data has shown that, in 2012, 31.6% of the SEC’s workforce comprised of people of color, and only 12.9% were at the senior employee level. The numbers were lower at the senior officer level. During fiscal year 2012, the SEC’s senior officer ranks consist of about 86.7% White, 5.5% African-American, 3.9% Hispanic, and 3.1% Asian-American. Moreover, 68.8% of the senior officers were male and 31.3% female. I have consistently spoken out about the SEC’s need to be more diverse and more representative of the communities we live in. See, e.g., Commissioner Luis A. Aguilar, “*Inclusion is a Strength: Corporate America and the SEC Should Reflect America*,” (March 21, 2013) (“I strongly believe that a diverse workforce at the SEC is critical in order for the SEC to achieve its core mission; however, and, to put my cards on the table, the SEC has much to do in order for its workforce to reflect the communities we live in.”), available at <http://sec.gov/news/speech/2013/spch032113laa.htm>; Commissioner Luis A. Aguilar, “*Still Fighting for Inclusion and Equal Opportunity*,” (April 21, 2011) (“... I was particularly struck by the fact that our staff ranked the SEC 24th out of 28 agencies in support for diversity.”), available at <http://sec.gov/news/speech/2011/spch042111laa.htm>; Commissioner Luis A. Aguilar, *Equalize Opportunities for All Americans to Participate in Financial Services*,” (April 27, 2009) (“It is absolutely clear that the SEC needs to do a

lot more to recruit, retain and advance minority candidates at the professional and senior levels.”), available at <http://sec.gov/news/speech/2009/spch0427091aa.htm>.

⁵ U.S. Equal Employment Opportunity Commission, *2012 Job Patterns for Minorities and Women in Private Industry (EEO-1)*, 2012 EEO-1 National Aggregate Report by NAICS-2 Code (Finance and Insurance), (2012), available at <http://www1.eeoc.gov/eeoc/statistics/employment/jobpat-eeo1/2012/index.cfm#centercol>.

⁶ *See id.*

⁷ *See id.* The diversity at the top management of publicly traded companies is even worse. For example, a recent report has shown that there were only six Black CEOs (1.2%), eight Latino CEOs (1.6%), eight Asian-American CEOs (1.6%), and 21 women CEOs (4.2%) at Fortune 500[®] companies. *See DiversityInc*, “Where’s the Diversity in the Fortune 500 CEOs?,” available at <http://www.diversityinc.com/facts/wheres-the-diversity-in-fortune-500-ceos/>.

⁸ Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies* (Princeton, NJ: Princeton University Press, 2007) (A study found that “there is a lot of evidence that people’s identity groups—ethnic, racial, sexual, age—matter when it comes to diversity in thinking.”).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Forbes, *Global Diversity and Inclusion: Fostering Innovation Through a Diverse Workforce*, p. 5, (July 2011), available at http://images.forbes.com/forbesinsights/StudyPDFs/Innovation_Through_Diversity.pdf.

¹² “While the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the SEC to create and staff an Office of Minority and Women Inclusion to, among other things, ‘assess[] the diversity policies and practices of entities regulated by the agency[,]’ the statute expressly does not give the SEC authority to require diversity measures.” Barbara Black, *Stalled: Gender Diversity on Corporate Boards*, 37 U. Dayton L. Rev. 7, 11 (Fall 2011) (citing Sections 342(b)(2)(C) and 342(b)(4) of the Dodd Frank Act); Section 342(b)(2)(C) of the Dodd-Frank Act requires each OMWI director to develop standards for “assessing the diversity policies and practices of entities regulated by the agency.” Section 342(b)(4) of the Dodd-Frank Act states that Section 342(b)(2)(C) should not be construed “to require any specific action based on the findings of the assessment.”