

Congress of the United States
Washington, DC 20515

March 2, 2016

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Chair White:

We are writing to urge the Commission to seek public comment, without any further delay, on a proposed amendment submitted nearly a year ago by the Ohio Public Employees Retirement Systems (OPERS) and several leading public fund administrators on behalf of public fund fiduciaries.¹ While we applaud your decision to have SEC staff review OPERS' petition, we are disappointed with the amount of time the SEC is taking to examine and seek public comment on this important and widely supported proposal.

Investment advisors, shareholders, policymakers, and other stakeholders have been telling the SEC and others for decades now that the diversity characteristics of board nominees and directors is information they need to make informed investment and voting decisions. Similarly, stakeholders have been explaining for decades that enhanced diversity disclosures may promote sociodemographic diversity on corporate boards, which in turn may promote better business strategy and corporate results.² In 2009, the SEC partly acknowledged these stakeholders and their concerns when it required publicly-traded companies to disclose more information on director selection and diversity. Specifically, the SEC required reporting on **(1)** the companies' minimum qualifications, if any, for all directors, and any specific qualities or skills that at least one director must possess; and **(2)** whether and, if so, how the board considers diversity in identifying board nominees and if a diversity policy exists, how it is implemented and judged effective. The SEC did not define diversity.³

The 2009 rule change, however, fell short of providing stakeholders the information they need on board diversity. First, company disclosures now describe with varying levels of specificity the minimum qualifications and skills they use to identify directors. Yet many disclosures lack the

¹ Leaders from the following entities signed the Petition for Amendment of Proxy Rule Regarding Board Nominee Disclosure – Chart / Matrix Approach (File No. 4-682): the California Public Employees Retirement System; the California State Teacher's Retirement System; the Connecticut Retirement Plans and Trust Fund; the Illinois State Board of Investment; New York City; the New York State Common Retirement Fund; the North Carolina Department of State Treasurer; the Ohio Public Employees Retirement Systems; and the Washington State Investment Board.

² See U.S. Glass Ceiling Commission, *A Solid Investment: Making Full Use of the Nation's Human Capital* (Washington, D.C.: U.S. Government Printing Office, 1995), at 42-43.

³ Item 407(c)(2)(v)-(vi) of Regulation S-K.

clarity and detail needed for stakeholders to judge easily and accurately whether (1) the company's approach to director qualifications and skills are appropriate in light of the company's overall business strategy and (2) the slate of board nominees is suitable. These disclosures could be improved, as OPERS explains, by also requiring a chart or matrix that visually depicts the company's approach to director qualifications and skills. Such a requirement, with minimal burden and cost on companies, would aid in everyone's understanding, including the SEC's understanding, of each company's approach.

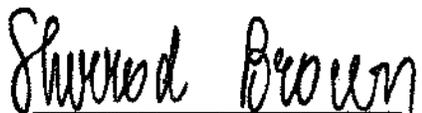
Second, while companies now provide disclosure on the consideration of diversity in the board selection process, these disclosures often do not describe the concept of diversity with reference to sociodemographic characteristics such as gender, race, or ethnicity, or provide the sociodemographic characteristics of the board nominees.⁴ These disclosures could be improved, yet again with minimal burden and cost on companies, by using a chart or matrix that lists whatever information each board nominee provides to the company about his or her gender, race, and ethnicity. Indeed, many companies already use charts or matrices to communicate biographical information about board nominees; for those companies, this change may be as simple as adding new columns to an existing chart.

In addition to being minimally burdensome, these types of improvements to board diversity disclosure are widely supported. Fifteen of 19 stakeholders told the U.S. Government Accountability Office last year that they support improving SEC rules to require more specific information from public companies on board diversity. Twelve stakeholders explicitly supported the SEC requiring companies to disclose the number of women on the board.⁵ Moreover, the Council of Institutional Investors has endorsed the use of charts and matrices as "especially useful" disclosure tools for evaluating board candidates.⁶

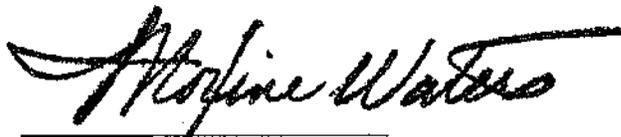
Again, we strongly urge the Commission to avoid any further delay on seeking public comment on this straightforward proposal.

Thank you for considering our views on this important matter.

Sincerely,



Ranking Member Sherrod Brown
Senate Committee on Banking,
Housing, and Urban Affairs



Ranking Member Maxine Waters
House Financial Services Committee

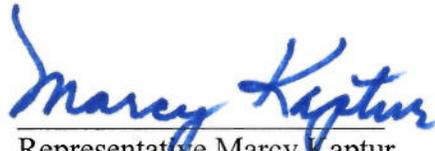
⁴ Dhir, Aaron, *Challenging Boardroom Homogeneity: Corporate Law, Governance, and Diversity* (Cambridge University Press, 2015), at 175-76.

⁵ *Corporate Boards: Strategies to Address Representation of Women Include Federal Disclosure Requirements*, GAO-16-30 (Dec. 2015), at 24-25.

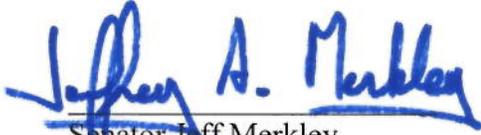
⁶ See, e.g., Council of Institutional Investors, *Best Disclosure: Director Qualifications & Skills* (Feb. 2014).



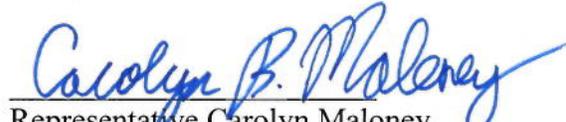
Senator Robert Menendez



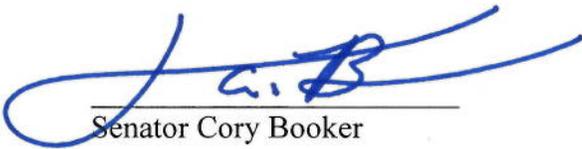
Representative Marcy Kaptur



Senator Jeff Merkley



Representative Carolyn Maloney



Senator Cory Booker



Representative Tim Ryan



Representative Marcia Fudge



Representative Joyce Beatty

Cc: The Honorable Michael Piwowar
The Honorable Kara Stein