

MEMO# 27705

November 19, 2013

Regulators Propose Standards for Assessing Financial Institutions Policies and Practices for Diversity and Inclusion; ICI Member Call Scheduled for Monday, November 25

[27705]

November 19, 2013

TO: SEC RULES COMMITTEE No. 43-13
SMALL FUNDS COMMITTEE No. 20-13
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 29-13
RE:

REGULATORS PROPOSE STANDARDS FOR ASSESSING FINANCIAL INSTITUTIONS' POLICIES AND PRACTICES FOR DIVERSITY AND INCLUSION; ICI MEMBER CALL SCHEDULED FOR MONDAY, NOVEMBER 25

On October 23, six federal financial regulatory agencies, including the Securities and Exchange Commission (collectively, the "Agencies"), [\[1\]](#) proposed joint standards for assessing the diversity policies and practices of the financial institutions they regulate (the "Consultation"). [\[2\]](#) Comments on the Consultation are due on December 24, 2013.

ICI will have a conference call with members to discuss potential comments on the Consultation at 2:00 Eastern time on Monday, November 25. To participate in the call, RSVP to Hellenia Walker at 202/326-5823 or helenia.walker@ici.org.

Background

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), each Agency now houses an Office of Minority and Women Inclusion (OMWI) that is required to develop standards for assessing diversity policies and practices in the entities regulated by that Agency.

During 2012, the Agencies' OMWI directors held roundtable discussions to solicit input on

assessment standards and learn about the challenges and successes of current diversity programs and policies in the financial sector. Information obtained from those discussions helped shape the proposed standards.

Proposed Standards

Pursuant to section 342(b)(2)(C) of the Dodd-Frank Act, the Agencies propose assessment standards in four key areas, described below, that are intended to promote transparency and awareness of diversity policies and practices within financial institutions.

The assessment standards cover four key areas:

- **Organizational commitment to diversity and inclusion.** The standards in this section of the Consultation would assess the extent to which leadership of the organization demonstrates its commitment to diversity and inclusion. The standards include: whether the entity includes diversity and inclusion considerations in both employment and contracting as an important part of its strategic plan; whether it has a diversity and inclusion policy that is approved and supported by senior leadership (including senior management and the board of directors); whether the entity provides regular progress reports to the board and/or senior management; whether it conducts equal employment opportunity and diversity and inclusion education and training on a regular and periodic basis; whether it has a senior level official (such as a Chief Diversity Officer) who oversees and directs the entity's diversity efforts; and whether it takes proactive steps to promote a diverse pool of candidates, including women and minorities, in its hiring, recruiting, retention, promotion, and its selection of board members, senior management, and other senior leadership positions.
- **Workforce profile and employment practices.** The standards in this section would assess whether the entity promotes the fair inclusion of minorities and women in their workforce. The standards include: whether the entity uses data from required reports (such as an EEO-1 Report) or affirmative action plans to track their workforce data to evaluate and assess workforce diversity and inclusion efforts; whether the entity utilizes metrics to evaluate and assess workforce diversity and inclusion efforts; whether the entity holds management accountable for diversity and inclusion efforts; and whether the entity has policies and practices that create diverse applicant pools for both internal and external opportunities.
- **Procurement and business practices and supplier diversity.** The standards in this section would measure the extent to which an entity uses minority-owned and women-owned businesses as suppliers or sub-contractors. The standards include: whether the entity has a supplier diversity policy that provides for a fair opportunity for minority-owned and women-owned businesses to compete in procurements of business goods and services; whether the entity has methods to evaluate and assess its supplier diversity; and whether the entity has practices to promote a diverse supplier pool.
- **Practices to promote transparency of organizational diversity and inclusion.** The standards in this section would assess whether the entity provides transparency in its activities regarding diversity and inclusion by making information available to the public over its web site or otherwise. The information includes the entity's diversity and inclusion strategic plan; its commitment to diversity and inclusion; and its progress toward achieving diversity and inclusion in its workforce and procurement

activities, which may include its current workforce and supplier demographic profiles, current employment and procurement opportunities, forecasts of potential employment and procurement opportunities, and the availability and use of mentorship and developmental programs for employees and contractors.

The standards are intended to be flexible, and may be tailored to take into consideration an individual entity's size and other characteristics (for example, total assets, number of employees, governance structure, revenues, number of members and/or customers, contract volume, geographic location, and community characteristics).

Proposed Approach to Assessments

Importantly, entities would be encouraged—but not required—to conduct self-assessments pursuant to the proposed standards. The Consultation explains that the “assessment envisioned by the Agencies is not one of a traditional examination or other supervisory assessment. Thus, the Agencies will not use the examination or supervision process in connection with these proposed standards.” This approach is consistent with section 342(b)(4) of the Dodd-Frank Act expressly states that nothing in section 342(b)(2)(C) “may be construed to mandate any requirement on or otherwise affect the lending policies and practices of any regulated entity, or to require any specific action based on the findings of the assessment.”

The Consultation states that a “model assessment” would include a self-assessment utilizing the proposed standards, voluntary disclosure to the appropriate Agency of the self-assessment and other information the entity deems relevant, and the public disclosure of information by the entity on its public web site, annual reports, and in other materials, regarding its efforts to comply with the proposed standards.

Request for Comment

The Consultation asks for comment on all aspects of the proposed standards, including whether they would be effective and appropriate to promote diversity and inclusion, yet flexible enough to allow meaningful assessments of entities with a wide range of particular characteristics or circumstances.

Perhaps more importantly, the Consultation asks whether the proposed “model approach” to assessment is effective and appropriate to promote diversity and inclusion. In this regard, Commissioner Luis Aguilar issued a statement [\[3\]](#) on the Consultation that posed related questions:

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.... [I]t 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?

Next Steps

The Institute is considering whether to comment on the Consultation. Comments are due December 24, 2013.

Robert C. Grohowski
Senior Counsel
Securities Regulation - Investment Companies

[1] The Agencies include the Office of the Comptroller of the Currency ("OCC"); Board of Governors of the Federal Reserve System ("Board"); Federal Deposit Insurance Corporation ("FDIC"); National Credit Union Administration ("NCUA"); Bureau of Consumer Financial Protection ("CFPB"); and Securities and Exchange Commission ("SEC").

[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, SEC Release No. 34-70731 (October 23, 2013), available at <http://www.sec.gov/rules/policy/2013/34-70731.pdf>.

[3] Statement on the Proposed Interagency Policy Statement to Establish Standards to Assess the Diversity Policies and Practices of Regulated Entities, Commissioner Luis A. Aguilar, U.S. Securities and Exchange Commission (Oct. 23, 2013), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370540026835#.Uou5gyf0-Ck>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.