



California Corporate & Securities Law

Diverse Director “DataSource” Announced, Dogged by Questions

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Yesterday, CalPERS and CalSTRS issued this joint [press release](#) announcing that they have commissioned [The Corporate Library](#), a private business that is part of GovernanceMetrics International, to develop the Diverse Director Database. The Corporate Library will own and maintain the database, which is intended to be a resource for identifying board candidates. The database will be available to registered subscribers. According to the press release, The Corporate Library will work with CalPERS, CalSTRS and an 18 member advisory panel to create the database.

CalPERS and CalSTRS failed to disclose many details in their joint press release. However, each has created webpages that provide some additional (although not entirely consistent) information. Some important, yet unanswered, questions that remain are:

- Are either CalPERS or CalSTRS financially supporting this project?
- Will The Corporate Library be required to share any revenues from this project with the funds? If not, why not?
- Will members of the Advisory Committee be required to file Statements of Economic Interest (Form 700) with the [California Fair Political Practice Commission](#)? If not, what steps are being taken to address potential conflicts of interest?
- What procurement process was used in the selection of The Corporate Library?
- Does the Advisory Committee have a charter? If not, who defines their responsibilities and what are they?

Although CalSTRS asserts in its [FAQs](#) that The Corporate Library will be “responsible for all liabilities arising from the project, including but not limited to liabilities related to director malfeasance, data protection and security issues as well as compliance with California Law”, the mere assertion of non-liability does not make it so. Indeed, several theories of potential liability come to mind quite readily. It is unclear from the information provided whether CalPERS and CalSTRS is requiring GovernanceMetrics International to indemnify the funds against potential liability which could be considerable if the database is compromised.

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Finally, the entire 3D project has been dogged by a lack of transparency. For example, the Advisory Committee met over the weekend at the [CII conference](#) *before CalPERS and CalSTRS had even announced its formation and composition*. Given the lack of detail provided about the formation of the Advisory Committee, it is unclear to me whether the committee is subject to California's Bagley-Keene Open Meeting Act. If so, public notice and access requirements apply to its meetings.

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