



Time To Reevaluate The Meaning Of Director Qualifications

Posted In [Corporate Governance](#)

11/19/2010

In 2003, the Securities and Exchange Commission began requiring companies to disclose “any specific, minimum qualifications that the nominating committee believes must be met by a nominating committee–recommended nominee for a position on the company’s board of directors, and a description of any specific qualities or skills that the nominating committee believes are necessary for one or more of the company’s directors to possess”. See [SEC Release 33–8340](#) and Item 407(c)(2)(v) of Regulation S–K. Often, companies include these qualification requirements in their nominating committee charters or their nomination guidelines. I suspect, however, that many of these companies are not including qualification requirements in their corporate bylaws or articles of incorporation.

Although the SEC has [stayed](#) its proxy access rule, companies may want to consider director qualification requirements in light of corporate law. In this regard, it is important to note that the qualifications disclosed pursuant to Item 407(c)(2)(v) of Regulation S–K aren’t necessarily the same as qualification for service as a director. If a California corporation wishes to impose a director qualification requirement, the requirement should be included in either the articles of incorporation or bylaws. Cal. Corp. Code § 212(b)(4).

If proxy access becomes a reality, it will be important to know whether a qualification requirement is only something applied by a nominating committee in its selection of nominees or a condition to being seated as a director. It will also be important to know when the qualification requirement must be satisfied.

Please contact **Keith Paul Bishop** at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>