

WOMEN ON CORPORATE BOARDS STUDY – NEW CORPORATE REPORTING REQUIREMENTS NOW IN EFFECT IN NEW YORK

Hodgson Russ Corporate Governance & Compliance Alert
June 30, 2020

Beginning June 29, 2020, all domestic and foreign business corporations in New York are required to report the number of directors constituting the board and how many of those directors are women. This new requirement applies only to business corporations. It does not apply to not-for-profit corporations, limited liability companies, limited liability partnerships, or limited partnerships. This new director information will be reported on the biennial statement.

What is a biennial statement?

The biennial statement is a report that must be filed every two years by all public and private business corporations formed or authorized to do business in New York. The biennial statement is filed online with a filing fee of \$9. The biennial statement must contain (i) the name and business address of the corporation's chief executive officer, (ii) the street address of its principal executive office, (iii) the address to which the New York Secretary of State should forward copies of process accepted on behalf of the corporation, and (iv) as of June 29, 2020, the number of directors constituting the board and how many of those directors are women.

Why does the biennial statement require director information?

On June 20, 2019, the New York State legislature passed the "Women on Corporate Boards Study" act, which was signed by Governor Cuomo on December 30, 2019. The act amended Section 408 of the New York Business Corporation Law to include the director information requirement in the biennial statement.

The purpose of the act is to conduct a study on the number of women directors who serve on each board of directors of domestic and foreign corporations authorized to do business in New York, an analysis of the change in number of women directors from previous years, and the aggregate percentage of women directors on all such boards of directors. On or before February 1, 2022, and on or before February 1 of every fourth year thereafter, the New York Department of State will publish a report on the findings of such study and post the report on its website.

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Is reporting director information optional?

No.

Part 4 of the biennial statement (Number of Directors) contains two questions: (1) Number of Directors Constituting the Board of Directors, and (2) Number of Directors on the Board of Directors that are Women. Each question is a required field and the biennial statement cannot be submitted without providing answers to these questions.

When do I file the biennial statement?

A corporation's biennial statement is due in the calendar month in which the corporation filed its original certificate of incorporation or application for authority to do business in New York. The biennial statement must be filed every two years.

What if I already filed my biennial statement this month?

If your biennial statement was due this month and has already been filed prior to June 29, 2020, you do not have to re-file the statement to comply with the director information requirement. Your next biennial statement will be due June 2022.

Is there a penalty if I do not file my biennial statement?

Past due biennial statements result in a "past due" status on corporation's certificate of status (the "good standing certificate"). Although Section 409(2) of the New York Business Corporation Law provides that delinquent corporations must pay a fine of \$250, in our experience, the fine is not regularly enforced and corporations may generally cure such delinquency by filing the current biennial statement with the \$9 filing fee.

Past due statements of more than four years must be filed using a paper form. The paper form is not available online, but you may be request it by contacting the Statement Unit of the New York Department of State's Division of Corporations by fax at (518) 486-4680 or by email.

Please contact William Hodges (716.848.1708), Cristin Murray (716.848.1443) or Craig Fischer (716.848.1266) with any questions you have regarding complying with this new requirement.

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