

SEC Commissioners Take Divergent Views on Corporate Governance and Related Disclosure Regulations

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With annual meeting season looming, SEC Commissioner Luis Aguilar recently [advocated](#) for improved proxy disclosure, noting that many companies “continue to fall short of providing the robust, clear and useful disclosure required by law.” Acknowledging that the rules requiring disclosure of board diversity allowed diversity to be defined in any number of ways, he indicated that “to truly meet the needs of investors, a proxy statement would need to state the gender and racial or ethnic background of incumbent directors and nominees,” and whether those aspects of diversity are taken into account when considering board candidates. In fact, in his view, “if a company has no women or persons of color on its board, it should state whether or not it has considered increasing the size of its board to enhance diversity” and if not, why.

He also urged all issuers to discuss the role of compensation and risk management. While such disclosure is required only if the risks are material, he believes that company assessments of risks and rewards in compensation plans are “inherently material” to investors. In fact, beyond specific pay schemes, he notes that the pay ratio between CEO compensation and median employee pay can create enterprise risk, including employee, customer and shareholder discontent.

He criticized the discussion of board leadership structure and risk oversight found in most proxy statements as being boilerplate and failing to account for a company’s specific circumstances. Finally, he supports mandatory disclosure of corporate political spending.

A month earlier, Commissioner Gallagher [decried](#) the “law of unintended consequences” in efforts to federalize corporate governance regulation to cover “social and political issues rather than issues that would be material to investors.” In particular, the governance aspects of Dodd-Frank rulemakings appear, in his view, to “affect the behavior of companies and boards rather than to provide information that investors would find useful.” For example, he questioned the benefit of the not-yet-proposed requirement on disclosing the ratio of CEO pay to median employee pay. He then pointed to proxy advisory firms as the group that will really benefit from Dodd-Frank (in addition to lawyers and accountants) given their increased influence, and stressed the importance of ensuring that institutional investors are not overly relying on those firms’ analysis.

Finally, Commissioner Gallagher concluded that state law represents a better, more flexible means of regulating corporate governance and urged that the Commission “resist the urge to intrude upon state matters absent compelling reasons to do so.”

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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