

SEC Chair's Remarks on Recent Governance Topics of Interest

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Chair White covered a wide [array of topics](#) recently at a securities regulation conference, though the press immediately focused on her comments about the possibility of new rules for disclosing board diversity. Her comments on that and other governance issues follow.

Additional board diversity disclosures being studied. Chair White believes that diversity adds value to boards and makes them function better, and is troubled by the dearth of diversity on boards currently. Speaking personally, she disputes notions that there is a supply problem. In terms of the SEC's regulatory mandate, the SEC does not require disclosure about board qualifications other than with respect to disclosure rules on director experience, backgrounds and diversity policies.

She recognizes that questions have been raised about whether SEC rules provide sufficient information to investors interested in racial, ethnic and gender diversity, which we previously discussed [here](#). As those concerns are "well-founded," she has asked the staff to study the board diversity disclosure rules as they currently exist and determine whether additional guidance or rulemaking is needed.

Disclosure effectiveness continues. This is one of the Chair's most important priorities. There are numerous active and ongoing "work streams." The next steps would be a concept release on Regulation S-K, as well as technical amendments to the financial statements to address redundancies and conflicts with U.S. GAAP. Industry guides, particularly Guide 3 (bank holding company) and Guide 7 (mining), are also being reviewed. Another area that is being considered is foreign tax disclosure. Disclosure on cybersecurity and climate change have also been raised as possible issues, although it appears more by others than from within the SEC.

Clawback rules – blame the statute. Chair White notes that the statute was "pretty prescriptive" and much of the frequent criticisms about the rules have their source in the legislative history or the plain meaning of the statute, such as the no-fault concept. She also pointed to the statute in answering questions of which employees are captured by the rule. Other issues the SEC has heard about include the nature of compensation covered, how much board discretion should be available and whether foreign private issuers should be included. In each case, she emphasized that commenters should "understand what our statutory baseline...is to begin with."

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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