

Comparing the SEC's Rulemaking Agendas Indicates Potential for Less Rulemaking, but Significant Disclosure Initiatives Remain

July 25, 2017 | Client Update | 4-minute read

Like other federal agencies, the SEC recently released its regulatory agenda. The agenda is published by the Office of Information and Regulatory Affairs at the Office of Management and Budget within the Executive Office of the President (OMB) and purports to reflect the rulemaking initiatives for the coming year. In the past, the agenda was generally not predictive of the rules the SEC ended up either proposing or adopting, but in light of the new administration's deregulatory objectives, there is increased focus whether the agenda fulfills that mandate.

Mick Mulvaney, the Director of OMB, personally emphasized the importance of the unified regulatory agenda for all agencies on the day it was released. According to Mulvaney's [statements during a press gaggle](#), it shows that "we are blowing away our initial one in and two out goal for regulatory reform," referring to the administration's stated intent that two regulations must be eliminated for every new regulation introduced.

In comparing the SEC's Fall 2016 and Spring 2017 agendas, there are now 33 rulemakings listed under proposed and final stages, compared to 62 in the prior agenda. The three remaining Dodd-Frank executive compensation rulemakings that have been proposed on recoupment of executive pay (clawback), pay for performance disclosure and disclosure of hedging policies are not on the current agenda. Also eliminated are two issues that were rumored to be of high interest for Chair White: the proposed rule on universal proxy cards and corporate board diversity disclosure, which had not yet been proposed. In addition, the 2013 rule proposal to amend Regulation D, Form D and Rule 156, issued then with a 3-2 vote at the Commission, is no longer on the agenda.

Insofar as it may be possible to believe that that agenda reflects the SEC's future plans, although developed in the Spring before Chairman Clayton joined the Commission, what remains or has been moved or added reflects a strong interest in general disclosure. Several important disclosure agenda items have only been issued for public comment and have not yet moved onto any part of rulemaking, but if adopted, they could create meaningful change in the SEC's efforts toward streamlining disclosure.

The key rulemakings on the proposed rule stage of the agenda that survived from the prior list, and would be of interest to public companies include:

- Effectiveness of financial disclosures about entities other than the registrant, which was issued in September 2015 as a [request for public comment](#). The request pertains to requirements in Regulation S-X that require registrants to provide financial information about acquired businesses, subsidiaries not consolidated and 50 percent or less owned persons, guarantors and issuers of guaranteed securities, and affiliates whose securities collateralize registered securities. Our comment [letter to the SEC is here](#).
- Business and financial disclosure, which was issued as an ambitious and lengthy [concept release](#) with more than 800 questions in April 2016. The comments received indicate support for additional disclosure from a variety of interested parties and investors, particularly on environmental and social issues but also regarding tax planning, and attempts to implement reform to pare back disclosure requirements is likely to be complex. Our comment letter to the [SEC is here](#).
- [The proposed rule](#), issued in October 2010, that would require investors to announce how they voted on say-on-pay.

- In a bit of a surprise given the shift away from other corporate governance rulemaking, the July [2015 concept release](#) on additional disclosure on audit committees remains on the agenda. Our comment [letter to the SEC is here](#).
- The [request for comment](#) issued in April 2017 on the Guide 3 bank holding company disclosure.

A new item added to the list of possible proposed rules is implementation of the FAST Act Report recommendations.

The list of rulemakings in the final rule stages of interest to public companies include:

- Disclosure update and simplification, which was issued as [a proposed rule](#) in July 2016 to amend disclosures that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, GAAP, IFRS or other changes. These were largely non-controversial. Our comment [letter to the SEC is here](#).
- Modernization of property disclosure for mining registrant, which was issued [as a proposed rule](#) in June 2016. Our comment [letter to the SEC is here](#).
- Simplification of disclosure requirements for emerging growth companies and forward incorporation by reference on Form S-1 for smaller reporting companies, which was adopted as an [interim final rule](#) in January 2016, to implement certain provisions of the FAST Act. Our comment [letter to the SEC is here](#).

A new item added to this list is auditor independence with respect to loans or debtor-creditor relationships, regarding the independence of an accountant when the accountant has a lending relationship with an entity that holds equity securities of the accountant's audit client.

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.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.