

SEC Chair White Addresses Possibility of Disclosure Reform

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It is well known that Chair White and her staff have stressed that their immediate focus is on completing the mandatory rulemaking under the Dodd-Frank and JOBS Acts, but in a sign of possible things to come after that task, Chair White [spoke](#) to the National Association of Corporate Directors (NACD) about the risk of information overload in the disclosure companies provide to investors.

Chair White defined information overload as “a phenomenon in which ever-increasing amounts of disclosure make it difficult for an investor to wade through the volume of information she receives to ferret out the information that is most relevant.” Chair White explored several types of disclosure for potential reform. She questioned whether there are specific requirements that are simply not necessary for investors, or that investors do not want, in terms of reflecting the needs of investors today. Examples mentioned included the historical share closing prices, dilution disclosure and the ratio of earnings to fixed charges.

In addition to SEC rules that might have outlived their usefulness, she examined whether companies provide extensive disclosure to reduce litigation risk, such as ever-increasing risk factor and cautionary safe harbor language for forward-looking statements, as well as include lengthy executive compensation disclosure due to the say-on-pay vote. She also addressed concerns about repetitive disclosure, like information on legal proceedings that appears in its own section but also in the notes to financial statements, risk factors and MD&A.

Chair White emphasized that the disclosure regime is fundamentally grounded in materiality standards rather than line item requirements, so that even new topics like cybersecurity breaches would be covered. It may be helpful to update industry guides, either in the form of guidance or rules. Finally, the timeframe of required disclosure in an age of technology when investors want current information could also be part of the disclosure regime analysis.

She briefly focused on the possibility of a filing and delivery framework based on the nature and frequency of company disclosures, including a “core document” or “company profile” with information that changes infrequently. Companies could then be required to update the core filings with information about securities offerings, financial statements, and significant events. The SEC will soon make public a report that was required under the JOBS Act to examine disclosure requirements and to consider how to approach modernizing and simplifying the requirements, and to also reduce the costs and other burdens of the disclosure requirements for emerging growth companies.

Chair White sounded a similar theme in another recent [talk](#) where she impressed upon the need for the SEC to remain independent in determining appropriate disclosure, in the face of Congress or “interest groups” asking the SEC to issue rules directed at using disclosure to exert “societal pressure on companies to change behavior,” citing in particular the conflict mineral requirements. While she questioned the policy matter of leveraging the federal securities laws to accomplish social goals, Chair White indicated that the Commission cannot simply ignore the legislative mandates. As a result, the SEC intends to write rules that are consistent with the statute, the SEC’s core mission and in the process also try to mitigate costs for companies.

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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