

Commissioner Gallagher Promotes Changes to SEC Disclosure

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Commissioner Gallagher recently echoed Chair White's comments regarding the possibility of modifying public company disclosure requirements, which we previously discussed [here](#), noting that under her leadership, "the Commission will begin to make real headway on disclosure reform." While intensely critical of the mandates under the Dodd-Frank Act as "needlessly clutter[ing] disclosure documents," he indicated that the soon-to-be-released Regulation S-K study called for under the JOBS Act will be important to these reform initiatives.

Commissioner Gallagher criticized several types of SEC filings and provided specific suggestions. Proxy statements need to be "streamlined," such as by allowing tables, other than the summary compensation table, to be included in an appendix. Basic corporate information could be revealed in an online disclosure system and updated as necessary rather than repeated annually. In addition, he questioned whether, for example, changes to amended compensation plans of named executive officers should be disclosed immediately, and may be one factor that leads to the proliferation of Form 8-K filings. He also blames the non-GAAP rules for the "creeping incursion of financial reporting" into 8-Ks.

Reforming registration statements could include the permissibility of forward incorporation by reference for Form S-1s. As a general matter, the SEC should provide issuers with what they need not disclose, as well as what they must disclose, to allow companies to eliminate redundancies while reducing litigation risk. The fact that the notes to the financial statements and MD&A disclosure often repeat each other was cited as an area that needs to be fixed. Commissioner Gallagher advocates "layering disclosure" so that the focus in a disclosure document is on inherently material information, such as the financial statements, while other information is in a separate section or a different document. This will give the SEC an opportunity to examine what liability should attach to particular disclosures and omissions that are not inherently material, which for him includes the pay ratio disclosure.

He would like to have the Commission endorse SEC guidance rather than allowing the staff to issue the guidance alone. Perhaps in a dig at the recent proxy advisory roundtable held by the SEC, he stated that the SEC should "resist successive rounds of concept releases and roundtables in areas where such specific problems and practical solutions have already become evident." Commissioner Gallagher's sentiments regarding proxy advisers and the SEC's role in enhancing their influence through the issuance of no-action letters to investment advisers is clear, as it is a [topic](#) he speaks on frequently.

Finally, he warns that he believes Congress will continue to "use the securities disclosure regime to further policy objectives fundamentally unrelated to providing investors with information that is material to their investment decisions," as they will continue to push "politically-motivated" disclosure. He believes that the "Commission must monitor continuously and resist consistently" rather than "seeming to pick and choose which disclosure mandates a majority of Commissioners like."

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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