

Society of Corporate Secretaries and New York City Bar Submit Comment Letters on SEC Disclosure Effectiveness Initiative

September 17, 2014 | Client Update | 3-minute read

SEC Chair White has spoken about the SEC's interest in reforming the current disclosure regime, which we discuss [here](#). Perhaps foreshadowing the possible benefits of change, the *WSJ* recently [reported](#) on Corp Fin's role in prowling through securities filings, dubbed the "the world's most impenetrable prose," followed by [a story](#) on how an outfit that runs the SAT test graded the filings of six large companies for "readability."

In response to the SEC's request for comments on its disclosure effectiveness project, the Society of Corporate Secretaries and Governance Professionals proposed [several enhancements](#) to 34' Act reports:

- Eliminate disclosure of obsolete information, such as historical stock price disclosures and the stock performance graph, ratio of earnings to fixed charges and selected financial data.
- Eliminate duplicative disclosure, such as information that is required to be included in the "Business Description" or "Properties" sections, but is often again repeated in the MD&A if a company believes it is material.
- Eliminate incremental, line-item disclosure requirements that apply without regard to materiality, as well as review requirements with quantitative disclosure thresholds that do not reflect materiality, such as disclosure of sales of unregistered securities.
- Coordinate disclosure requirements between the SEC and FASB, such as the requirement to discuss legal proceedings, which are also covered under ASC 450 Contingencies, causing many companies to repeat large portions of the footnote in their MD&As. The comment letter also suggests eliminating SEC mandates that were designed to address gaps in accounting rules that have since been fixed, such as disclosure of certain off-balance sheet arrangements and market risk disclosures, as well as topics that both the SEC and FASB cover but from different perspectives. The Society urges the two agencies to work together, since some of FASB's recent requirements and proposals appear to need MD&A-type information in the footnotes, that then place substantive qualitative analysis in financial statements.
- Use current technology, such as building a "company profile" system so that basic information about the company and its operations can be presented in a centralized place, while periodic reports could focus solely on new information about the latest fiscal period. Tabs and folders in the company profile could provide information by topic, such as basic descriptions of the company's business or links for filed exhibits. Other tabs could cover risk factors or non-GAAP information.
- Eliminate the "glossy annual report," since the need for one has become obsolete with the 34' Act documents being available easily and quickly.
- Limit the time periods covered by MD&A to the most recent period and comparison to the immediate prior year, not three years of results.

Finally, the Society asks the staff to consider reviewing newly adopted disclosure requirements every five years for possible staleness. Along those lines, in addition to issuing guidance on new topics, the staff should also issue guidance on topics considered "closed," such as the 2003 MD&A guidance on disclosure of critical accounting estimates that have largely become boilerplate.

The Committee on Financial Reporting of the New York City Bar also submitted a letter to suggest a rule that would encourage companies at the outset of their annual reports to provide an overview describing what happened at the company over the past year, and its expectations and concerns about the year to come.

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

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