

SEC Rulemaking on the Regulatory Flexibility Agenda

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According to the Regulatory Flexibility Agenda recently [published](#), we can expect to see a host of governance rulemaking from the SEC on or before April 2016. However, the Agenda has generally proved to be unreliable in predicting the timing of SEC actions, and even rulemaking topics. Many may recall the outcry when the SEC once placed proposed rules requiring political contributions disclosure on the agenda and later eliminated it.

As the SEC noted several years ago, the Regulatory Flexibility Act (RFA) requires each federal agency in April and October of each year to publish in the Federal Register an agenda identifying rules that the agency expects to consider in the next 12 months that are likely to have a significant economic impact on a substantial number of small entities. The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda, and in fact, an agency is not required to consider or act on any matter that is actually included in the agenda.

The items on the current Agenda with the April 2016 date include both fairly old and more recent items at all stages of rulemaking. Final rules on disclosing CEO pay ratio and employee and director hedging are both on the Agenda. The pay versus performance rule is listed but has no date. While the Agenda puts the clawback rule in April 2016 as well, the *Wall Street Journal* [reported](#) that the rule will be proposed on July 1.

The *WSJ* also states that the pay ratio rule could be finalized this fall. That timing, rather than April 2016, would appear to be consistent with reports of what Chair White said at a recent meeting with Senator Elizabeth Warren. According to a number of articles, the publication of the Agenda with April 2016 dates led Senator Warren to believe that the adoption of the final pay ratio rules had been changed and is part of the criticism in her widely reported letter to Chair White.

Other governance-related matters on the Agenda, all with the April 2016 date, include:

- **Investor voting on say-on-pay and golden parachute proposals.** Originally proposed in November 2010, the rules would amend Form N-PX and require institutional investment managers to report how they voted say-on-pay and golden parachutes.
- **Audit Committee concept release.** The Office of the Chief Accountant is considering recommending that the Commission publish a concept release to obtain information about the extent and nature of the public's interest in revising the audit committee disclosure requirements that are currently in Item 407 of Regulation S-K.
- **Resource extraction.** The Division is considering recommending that the Commission propose rules to require resource extraction issuers to disclose in an annual report of the resource extraction issuer payments made to foreign governments or the Federal Government for the purpose of commercial development of oil, natural gas or minerals. The Commission had previously adopted a rule but it was vacated and remanded to the Commission by the U.S. District Court for the District of Columbia in July 2013.
- **XBRL.** The Division is considering recommending that the Commission propose rules to amend the XBRL rules to allow companies to use Inline XBRL to file a single combined document.

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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