

Acting SEC Chair on Possible SEC Initiatives and Upcoming SEC Open Meeting

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During [a recent speech](#) on SEC initiatives, Acting SEC Chairman Piowar invoked the “Forgotten Investor,” as the person who is “dragged” into and “victimized” by someone else’s social reform efforts and must bear those costs.

He criticized the Dodd-Frank Act for imposing numerous burdens to extract “non-material disclosures,” citing as examples the rules related to conflict minerals, pay ratio and resource extraction provisions. For that reason, he noted that in recent weeks he has directed the SEC staff to begin reconsideration of both the conflict minerals and pay ratio rules. Although the current rule on resource extraction disclosure was repealed, the statutory mandate remains. Commissioner Piowar has asked the staff to “take a fresh look” at the requirements to determine how the SEC can comply “in a manner that better aligns with our core mission.”

Another area ripe for change is the distinction in Regulation D between accredited and non-accredited investors. Commissioner Piowar believes that the rule meant to protect investors who are not viewed to be as sophisticated may in fact be harming them, by preventing those investors from earning higher expected returns on riskier securities and also depriving them of mitigating other risks through overall portfolio diversification. For him, this “well-intentioned policy of investor protection” ends up “exacerbating inequalities of wealth and opportunity.”

The commissioner’s views on the assessment of civil monetary penalties were nuanced. While noting that penalizing corporations often means that investors, already the victims of the corporate malfeasance who may have suffered significant drops in the market value of their shares, will be “penalized by our penalties,” he noted that every case is different. He indicated that regulated entities such as broker-dealers and investment advisers clearly disclose the degree to which they are regulated and have put shareholders on notice of the risk of enforcement actions. Academic literature has shown that the announcement of civil penalties in FCPA cases may even cause stock prices to increase.

Finally, at an open meeting on March 1, the Commission will consider:

- Industry Guide 3 (Bank Holding Companies): publishing a request for comment to seek public input.
- Exhibit Hyperlinks and HTML Format: introducing a requirement to include a hyperlink to each exhibit listed in the exhibit indices of filings under Item 601 of Regulation S-K (or on Forms F-10 or 20-F). The Commission will also consider whether to require registrants to submit such registration statements and reports to EDGAR in HTML format.
- Inline XBRL Filing of Tagged Data: whether to propose amendments to require the use of “Inline XBRL” format for the submission of operating company financial statement information and mutual fund risk/return summaries. Further, the Commission will consider whether to eliminate the requirement for filers to post Interactive Data Files on their website and whether to terminate the Commission’s voluntary program for the submission of financial statement information interactive data.
- Exchange Act Rule 15c2-12: whether to propose amendments to Rule 15c2-12 (related to the list of event notices that a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must provide).

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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