

SEC Chairman Clarifies the Role of SEC Staff Views and Statements, Reinforced in Other Remarks and Statements on the Same Day

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Yesterday, Chairman Clayton [released a statement](#) that while the SEC staff might express their views in myriad ways, ultimately those staff statements are “nonbinding and create no enforceable legal rights or obligations of the Commission or other parties.”

As he noted, the staff’s perspective may be provided in the form of written statements, compliance guides, letters, speeches, responses to frequently asked questions and responses to specific requests for assistance. The staff may also provide companies and others with their interpretation about how Commission rules or regulations may apply in specific situations.

Chairman Clayton believes that it is important for the Commission to be mindful about the role of staff views and guidance, and he has instructed the directors in the Division of Enforcement and the Office of Compliance Inspections and Examinations to emphasize the distinction to their staff. Under his watch, all of the SEC divisions and offices have been reviewing whether prior staff statements and staff documents “should be modified, rescinded or supplemented in light of market or other developments.”

That same concept was repeated yesterday in the statement by the Office of Investment Management concerning their withdrawal of the 2004 letters to ISS and Egan-Jones, which we [discussed here](#). The staff stated that they have been considering whether prior staff guidance about investment advisers’ responsibilities in voting client proxies and retaining proxy advisory firms “should be modified, rescinded or supplemented. Staff guidance is nonbinding and does not create enforceable legal rights or obligations.”

In Chairman Clayton’s remarks to the SEC Investor Advisory Guidance, also yesterday, he pointed out that he has issued a statement “reiterating that SEC staff views are nonbinding and create no enforceable legal rights and obligations” and again, whether prior statements and documents “should be modified, rescinded or supplemented in light of market or other developments.”

Chairman Clayton did emphasize that continued engagement by the staff is important to help the Commission develop rules and regulations, and that he encourages such engagement, “with the recognition that it is the Commission and only the Commission that adopts rules and regulations that have the force and effect of law.”

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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