

Clayton Cites Shareholder Proposal and Proxy Advisory Firm Reforms as Priority Items for the SEC

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In a wide ranging [speech yesterday](#) on SEC rulemaking, Chairman Clayton stated that after disregarding the more “aspirational” approach of past administrations, the SEC’s changed its approach to tailoring the 2018 Regulatory Agenda to the initiatives that the agency could reasonably complete in the next 12 months. This led to the Commission advancing 23 of the 26 rules cited in the 2018 agenda.

Among the many significant initiatives for 2019 that the Chairman listed as priority items for the Commission included the proxy process, with an indication that he is interested in reforms, as he addressed:

Reviewing the ownership and resubmission thresholds for shareholder proposals. Chairman Clayton noted that the current \$2,000 ownership threshold was adopted 20 years ago, and the resubmission thresholds have been in place since 1954. The SEC should consider, in his view, whether there are factors in addition to the amount invested and the length of holding period, that “reasonably demonstrate that the proposing shareholder’s interests” are aligned with long-term investors.

Changing proxy advisory firms. The Chairman believes that there should be “greater clarity” regarding the division of labor, responsibility and authority between proxy advisors and their clients, and more transparency around the analytical and decision-making processes the firms use, including whether those are industry- or company-specific. He noted that some matters put to a vote should be analyzed on a company-specific, rather than a market-wide, basis. Investors should also have access to issuer responses to information in certain reports from proxy advisory firms, and the framework for addressing conflicts should also be considered.

Updating proxy “plumbing.” While there has been general agreement that the plumbing needs a “major overhaul” which would take time, the Chairman encouraged market participants to focus on what the Commission can do in the interim to improve the current system.

The staff is formulating recommendations for the Commission’s consideration on these topics, and the Chairman stated that he “intend[s] to move forward with the staff recommendations.”

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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