
SEC Disclosure Initiative Encounters Resistance on Capitol Hill

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Since 2013, the Securities and Exchange Commission, under the direction of Chair Mary Jo White, has undertaken a “Disclosure Effectiveness Initiative” aimed at improving the content and presentation of disclosures by SEC-reporting companies. (See our previous [post from February 20, 2014](#).) The Initiative has been spearheaded by the SEC’s Division of Corporation Finance. As described by Division Director Keith Higgins in late 2014, the goal of the Initiative “is to recommend to the Commission rule changes—principally to Regulation S-K and Regulation S-X—to update and modernize specific disclosure requirements, to eliminate duplicative disclosures and to continue to provide material information.” Mr. Higgins emphasized that “reducing the volume of disclosure is not our objective—we want to put better disclosure into the hands of investors. Although we believe that these efforts can reduce the costs and burdens on companies, updating the requirements may very well result in additional disclosures.” In furtherance of the Initiative, in September 2015 the Commission issued a [request for comment](#) on certain financial statement disclosure requirements in the SEC’s Regulation S-X. More recently, in April of this year, the Commission issued a 341-page [concept release](#) to seek public comment on modernizing certain business and financial disclosure requirements in Regulation S-K.

On June 14, 2016, Chair White testified before the Senate Committee on Banking, Housing and Urban Affairs. Her [written testimony](#) highlighted significant aspects of the Disclosure Effectiveness Initiative. She explained that the Initiative’s “goal is for the staff to make recommendations on how to update our rules to facilitate timely, material disclosure by companies, as well as improving shareholders’ access to that information.” She described the SEC’s work to date as well as contemplated future efforts with respect to governance and compensation disclosures and enhancement of the SEC’s EDGAR reporting system.

At the hearing, Senator Elizabeth Warren of Massachusetts sharply criticized the Disclosure Effectiveness Initiative. Among other things, she challenged Chair White on her reference to “information overload” in a 2013 speech. Senator Warren asserted that while she did not object to eliminating duplicative disclosure requirements, she was not aware of complaints by investors, as opposed to corporate interests, “about getting too much information.” Senator Warren also questioned the use of SEC resources for the Initiative at a time when many Dodd-Frank regulations have yet to be completed. Chair White responded that she believed that Senator Warren’s

characterization of the Disclosure Effectiveness Initiative was “much narrower than its intent,” noting that the project might result in companies being required to disclose more information on some topics, not less.

The SEC has moved forward with some disclosure-related rulemaking, including proposals to update the definition of smaller reporting companies and to modernize mining company disclosures. However, uncertainties created by the upcoming election and the continuing vacancies on the Commission, as well as the recent congressional focus, raise questions about whether the Disclosure Effectiveness Initiative is likely to result in any significant changes to core public company disclosure rules in the immediate future.

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