
SEC Chairman Outlines Disclosure and Corporate Governance Agenda

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Securities and Exchange Commission Chairman Mary L. Schapiro recently laid out the Commission's disclosure and corporate governance agenda for the upcoming months. Speaking at the Spring 2009 Meeting of the Council of Institutional Investors on April 6, 2009, Chairman Schapiro emphasized the Commission's role as the "investor's advocate" and focused on the Commission's task of ensuring that information provided to the capital markets is timely and reliable.¹ She noted that "while the SEC requires disclosure of important information from public companies, I am not sure we are asking for all the right things."

Chairman Schapiro described a number of initiatives affecting public companies that she believes will enhance disclosure to investors and increase director accountability. These include:

- In May, the Commission will consider a proxy access proposal designed to ensure that shareholders have a "meaningful opportunity" to nominate directors, and to hold directors accountable for risks taken by public companies. In considering this proposal, the Commission will review its 2003 and 2007 proposals regarding proxy access, which were never adopted, with "fresh eyes" and will consider the impact of proposed changes to Delaware corporate law.²
- In June, the Commission will consider whether to propose rules enhancing disclosure about the experience, qualifications and skills of director nominees. These rules would be intended to expand the information regarding director nominees to enable shareholders to make informed proxy voting decisions. Currently, the rules require only a brief description of a candidate's business experience over the past five years.
- Chairman Schapiro also stated that the Commission will consider requiring public companies to disclose their reasons for choosing a particular leadership structure, such as an independent chair, a non-independent chair or a combined CEO/chair.
- The Commission will consider again increasing disclosure by public companies regarding executive compensation, particularly as it affects risk management. Noting that "[w]e all know that compensation drives behavior," Chairman Schapiro pointed to commentary identifying compensation schemes as one of five primary driving forces of the economic turmoil. She indicated her desire to make sure that shareholders fully understand how

compensation structures and practices drive an executive's risk-taking. In particular:

- Chairman Schapiro said that the Commission will consider whether greater disclosure is needed about how a company -- in particular, its board -- manages risk in general and in relation to setting compensation.
- The Commission will consider whether to increase disclosure regarding a company's overall compensation approach, beyond the decisions related to the compensation of the highest paid executives, as well as compensation consultant conflicts of interest.

While admitting that the agenda is "ambitious," Chairman Schapiro highlighted the Commission's commitment to "moving forward thoughtfully...to restore confidence" in the US capital markets. If implemented, these initiatives could result in a significant expansion of companies' governance and disclosure obligations.

¹ Chairman Schapiro discussed other matters including proposals limiting short sales, increased regulation of market professionals and intermediaries, and the enforcement role of the SEC. However, this alert focuses solely on corporate disclosure and governance matters.

² The Delaware State Bar Association recently drafted amendments to the General Corporation Law of the State of Delaware, which would, among other things, provide shareholders with greater access to a Delaware corporation's proxy solicitation materials. The proposed amendments would authorize a Delaware corporation to adopt a bylaw that would grant shareholders the right to include shareholder nominees for the election of directors in the corporation's proxy solicitation materials, subject to lawful conditions set forth in the bylaws. Under the proposed amendments, a Delaware corporation would be permitted to include reasonable restrictions on a shareholder's access to proxy materials. The proposed amendments include a non-exclusive list of restrictions that are deemed to be reasonable.

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