SEC Rules Affecting the Governance of Public Companies

(Updated September 2023)

Under Chair Gensler's leadership, the SEC has taken significant steps to implement rules that are important for corporate accountability to investors and investors' ability to meaningfully engage in corporate governance. It is critical that the SEC remain on track and complete its agenda.

Human capital management

The SEC has human capital management disclosures for public companies on its agenda, but it has yet to propose a rule. As the Human Capital Management Coalition argued in its rulemaking petition, "[t]here is broad consensus that human capital management is important to the bottom line, and a large body of empirical work has shown that skillful management of human capital is associated with better corporate performance, including better risk mitigation . . . effective human capital management [is] essential to long-term value creation and therefore material to evaluating a company's prospects." The SEC should propose a comprehensive rule as soon as possible to enable investors to access information about companies that is consistent, comparable, and reliable.

Executive compensation

As the collapses of Silicon Valley Bank, Signature Bank, and First Republic Bank reminded us, executive compensation rules play a critical role in both ensuring executive accountability when their behavior harms investors and depositors and preventing such behavior in the first place. Under Chair Gensler's leadership, the SEC has already finalized important executive compensation rules:

1. Pay versus performance: This rule — mandated by Dodd-Frank — requires registrants to disclose information reflecting the relationship between executive compensation actually paid by a registrant and the registrant's financial performance.

2. Recovery of erroneously awarded compensation: Another Dodd-Frank mandate, this rule requires securities exchanges to adopt listing standards that require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation.

3. Rule 10b5-1 insider trading plans and related disclosures: These rules strengthen investor protections concerning insider trading and help shareholders understand when and how insiders are trading in securities for which they may have material nonpublic information.

The SEC should also finalize a key executive pay rule, section 956 of the Dodd-Frank Act. This section tasked the SEC and five other agencies with implementing a rule to ban incentive-based executive compensation that encourages “inappropriate” risk-taking. Advocates are calling the agencies to finalize a strong rule as soon as possible.

Stock buybacks

The SEC finalized an important rule requiring increased disclosures of stock buybacks. This rule is important to increase transparency for investors of a practice that has skyrocketed — reaching $6.3 trillion in the 2010s — while its specifics have remained opaque. Under the rule, issuers will have to give information about the number of shares bought back and the average price paid per share disaggregated by day. They will also have to check a box if certain executives traded company stock within four business days of the announcement of a stock buybacks program.

Rules proposed, but not yet finalized

Under Chair Gensler’s leadership, the SEC has proposed the below important rules that have yet to be finalized. The SEC should finalize these rules as soon as possible.

- Shareholder proposals: By providing clarity on key elements of the shareholder proposal rule (rule 14a-8), the SEC’s proposed amendments will help shareholders exercise their rights to submit proposals for consideration by their fellow shareholders. The rule will protect investors by reducing ways companies can evade disclosure and accountability around critical topics that matter to investors and have long-term financial impacts.

- Beneficial ownership and swaps: These rules would address information asymmetries between some investors and others. They would narrow loopholes hedge funds use to: 1) secretly build large ownership stakes in public companies; 2) engage in what is in essence legalized insider trading before disclosures of large ownership stakes are made public; and 3) use their newly-acquired ownership stake to extract short-term returns at the expense of long-term value.

- ESG funds disclosures: This rule would address greenwashing and ESG-washing by increasing transparency about how funds incorporate ESG into their investment decisions. It’s a necessary complement to the recently-finalized “Names Rule,” which sets important parameters for aligning fund names with their underlying investments.

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