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March 8, 2016



SEC Gives Insight On 2016 Initiatives

The following is written by Laura Anthony, Esq., a going public attorney focused on OTC listing requirements, direct public offerings, going public transactions, reverse mergers, Form 10 and Form S-1 registration statements, SEC compliance and OTC Market reporting requirements.

SEC Chair Mary Jo White gave a speech at the annual mid-February SEC Speaks program and, as usual, gave some insight into the SEC's focus in the coming year. This blog summarized Chair White's speech and provides further insight and information on the topics she addresses.

Consistent with her prior messages, Chair White focuses on enforcement, stating that the SEC "needs to go beyond disclosure" in carrying out its mission. That mission, as articulated by Chair White, is the protection of investors, maintaining fair, orderly and efficient markets, and facilitating capital formation. In 2015 the SEC brought a record number of enforcement proceedings and secured an all-time high for penalty and disgorgement orders. The primary areas of focus included cybersecurity, market structure requirements, dark pools, microcap fraud, financial reporting failures, insider trading, disclosure deficiencies in municipal offerings and protection of retail investors and retiree savings. In 2016 the SEC intends to focus enforcement on financial reporting, market structure, and the structuring, disclosure and sales of complex financial instruments.

2016 Disclosure Agenda

Chair White hit on the tremendous volume of regulatory changes and congressional mandates. Since 2010 Congress has given the SEC nearly 100 statutory mandates covering a multitude of complex rule requirements, with the FAST Act, JOBS Act, and the Dodd-Frank Act just being 3 examples. White confirms that the amount of recent rulemaking is of historic proportions, completing or overhauling many regulatory areas and providing dramatic changes to others. Again, 3 small examples are the FAST Act, JOBS Act and the Dodd-Frank Act, with the multitude of regulatory changes flowing from these 3 statutory directives.

In 2016 the SEC will continue implementing rules as directed by Congress. In addition to finalizing the remaining security swap and security-based swap dealer requirements under the Dodd-Frank Act, the SEC hopes to continue rulemaking related to the asset management industry, the structure of the equity markets and disclosure requirements (under Regulation S-K and Regulation S-X).

Related to the asset management industry, in May 2015 the SEC proposed increased reporting for investment advisers and mutual funds, including a requirement that funds report risk metrics, the use of derivatives, securities lending and liquidity of holdings.

Related to the structure of equity markets, the SEC has increased oversight over proprietary traders (see my blog [HERE](#)) and has proposed major revisions to regulations for alternative trading systems (this will be the subject of a future blog). Also related to equity markets, Chair White referenced the recent ANPR on new transfer agent rules (see my blog [HERE](#)) and the Tick Size Pilot program (see my blog [HERE](#)). Moreover, Chair White revealed that the SEC intends to shorten the clearing settlement life cycle from T+3 to T+2.

Disclosure effectiveness has been an ongoing central topic since the JOBS Act required the SEC to launch its Disclosure Effectiveness Initiative. The SEC intends to continue its focus in this arena and expects both additional rulemaking and industry guidance in 2016.

I have written several times on the SEC initiative and the subject of improving the disclosure requirements for reporting companies. Recently the SEC sought comment on financial disclosure requirements for subsidiaries and affiliate entities (see my blog [HERE](#)). Moreover, several of the provisions in the recent FAST Act were related to these initiatives. In particular, The FAST Act adopted many of the provisions of a bill titled the Disclosure Modernization and Simplification Act, including rules to: (i) allow issuers to include a summary page to Form 10-K (Section 72001); and (ii) scale or eliminate duplicative, antiquated or unnecessary requirements for EGCs, accelerated filers, smaller reporting companies and other smaller issuers in Regulation S-K (Section 72002). In addition, the SEC is required to conduct yet another study on all Regulation S-K disclosure requirements to determine how best to amend and modernize the rules to reduce costs and burdens while still providing all material information (Section 72003).

In September 2015, the SEC Advisory Committee on Small and Emerging Companies (the “Advisory Committee”) met and finalized its recommendation to the SEC regarding changes to the disclosure requirements for smaller publicly traded companies. My blog

Prior to that, in March 2015, the American Bar Association submitted its second comment letter to the SEC making recommendations for changes to Regulation S-K.

Mission and Philosophy

Chair White made a point of conveying the message that the SEC is not just about disclosure. They have broad regulatory authority over trading markets, broker-dealers, SRO’s, the settlement and clearing process and the PCAOB. The SEC intends to continue to work in each of these areas, including additional regulations on the swaps markets, clearing agencies, transfer agents, and technology systems. In addition, the SEC has and will continue to seek public comment on proposed rules, ideas related to proposed rules, and concepts in general. As Chair White states, “[W]e are therefore increasingly considering using measures beyond disclosure to fulfill our mission of providing strong investor protection, safeguarding market integrity, and achieving other regulatory objectives.”

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Securities Law Blog is written by Laura Anthony, Esq., a going public lawyer focused on OTC Listing Requirements, Direct Public Offerings, Going Public Transactions, Reverse Mergers, Form 10 Registration Statements, and Form S-1 Registration Statements. Securities Law Blog covers topics ranging from SEC Compliance, FINRA Compliance, DTC Chills, Going Public on the OTC, and OTCQX and OTCQB Reporting Requirements. Ms. Anthony is also the host of LawCast.com, the securities law network.

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