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Rocky Mountain Securities Conference: Corporate Disclosures Reform Next for SEC

Newly proposed reforms to the U.S. Securities and Exchange Commission's (SEC) disclosure regime would have a dramatic impact on public companies' current disclosure obligations.

Last week during her keynote at the 48th annual Rocky Mountain Securities Conference in Denver, SEC Commissioner Kara Stein called on the SEC to create a new digital platform. These reforms connect to the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), where Congress mandated that the SEC establish a Disclosure Effectiveness Initiative. In connection with the initiative, the SEC released a report documenting the failings of the current disclosure system, which has not been systematically reviewed and updated since 1996.ⁱ The SEC staff argued that the current regime could be improved to make disclosure requirements more "flexible" to adapt to investor demands.ⁱⁱ To facilitate these improvements, the SEC staff recommended that the disclosure regime be evaluated with particular economic considerations in mind, including "the extent to which a given disclosure requirement entails high administrative and compliance costs," and "whether the information provided by a given rule is available to existing security holders, potential investors, and the marketplace on a non-discriminatory basis from reliable sources."ⁱⁱⁱ

As part of the ongoing initiative, the SEC recently issued a concept release, Release S7-06-16, inviting feedback on how to improve its electronic data-gathering platform, "EDGAR," used by the public to evaluate a company's disclosures.^{iv} Upon announcing the Concept Release, Chair Mary Jo White stated, "[w]e want to make sure that our rules are facilitating both timely, material disclosures by companies and shareholders' access to that information. . . . And we want to make sure that our requirements are as efficient as they can be."^v

In her keynote address, Commissioner Stein echoed Chair White's statement and called for an ambitious overhaul of the disclosure regime. She advocated for a public disclosure platform that would provide investors and the public with a dynamic digital viewing platform, which could be accessed by all devices: smartphones, tablets, laptops and desktops alike. Unlike the current "paper" regime, where reporting must match the viewing format, Commissioner Stein envisions a platform that can generate side-by-side comparisons so that investors can compare common financial metrics across the same industry. For example, an investor might be able to compare net revenue across multiple mining companies in order to better evaluate an investment opportunity.

Under Commissioner Stein's vision, the new digital regime would permit companies to better interact with potential investors. A number of today's investors have new priorities, such as environmental, social, or corporate governance issues. Commissioner Stein believes a digital regime would allow companies to better emphasize pertinent information, while also providing investors better access to information that is important to their investment decisions. This in turn would assist companies and investors in finding compatible matches.

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Commissioner Stein foresees that such a viewing platform would not only be more streamlined and user-friendly for investors, it would also save costs for companies in the long term. Such a change, however, would place upfront costs on companies and would require their compliance staff and lawyers to adapt their current disclosure practices. This in turn presents risks for companies. Indeed, the current disclosure regime often serves as the backdrop for litigation, whereby companies are prosecuted for failing to disclose material public information.

Companies have until July 15 to comment on the Concept Release. In her speech, Commissioner Stein issued a clarion call to stakeholders to offer their comments and to aim high for the new disclosure regime. She implored that “[w]e need to broaden our vision and reach for a higher goal. Let us reimagine disclosure and how information can be exchanged between companies and investors. . . . It’s an ambitious goal, and we should be ambitious.”

Senior executives, compliance and legal staff, potential and current investors, and the public at large have a common interest in accessing a disclosure framework that is timely, interactive, and user-friendly. The commissioner’s speech and the initiative may signal the beginning of the end of a disclosure framework riddled with increasing layers of static, bureaucratic disclosure requirements that offer an incomplete view of a company’s underlying performance and potential. The comments the SEC receives will help determine how and when that end materializes.

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ⁱ U.S. Securities and Exchange Commission, “JOBS Act Section 108 Report to Congress on Review of Disclosure Requirements in Regulation S-K,” (Dec. 2013) (hereinafter “JOBS Report”), *available at* <http://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf>.

ⁱⁱ *Id.* at 93.

ⁱⁱⁱ *Id.* at 94. ^{iv} U.S. Securities and Exchange Commission, Concept Release S7-06-16 (published Apr. 15, 2016), *available at* <https://www.sec.gov/rules/concept/2016/33-10064.pdf>.

^v Tom Zanki, SEC Seeks Feedback on Changing Corporate Disclosures, Law360 (Apr. 14, 2016), *available at* <https://www.law360.com/articles/784631/sec-seeks-feedback-on-changing-corporate-disclosures>.