
SEC Hot Topics Institute: Panel I. Inside the SEC

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Warning

- **The material discussed in these slides is for illustrative purposes only and does not purport to reflect appropriate or inappropriate disclosure or procedures that should be followed or inquiries that should be made, if any, in any particular situation.**

A Brief Look at the SEC Landscape

2009 Commission

- **Chairman Mary Schapiro**
 - Joined in January 2009
 - Career regulator
 - Former CEO of FINRA
 - Former Chairman of CFTC
 - Former SEC commissioner
- **Democrats:** Elisse Walter and Luis Aguilar
- **Republicans:** Kathy Casey and Troy Paredes

SEC in 2009

- **Schapiro themes**
 - Enhanced enforcement
 - Corporate accountability
 - Improving market regulation
- **Commitment, direction and resolve**
 - 3-2 votes
- **Responses to Madoff**
 - IG Report issued in September 2009
 - Series of SEC reforms

U.S. Legislative Focus on Securities Laws

- **Senate**

- Schumer: *Shareholders Bill of Rights Act*

- **House**

- Peters: *Shareholder Empowerment Act*
- Frank: *Corporate and Financial Institutions Fairness Act*

- **Obama Administration**

- *Financial Regulatory Reform* white paper
- *Investor Protection Act of 2009*

Corporation Finance in 2009

Corporation Finance Personnel

- **Senior leadership**
 - Meredith Cross (Director)
 - Brian Breheny and Shelley Parratt (Deputies)
- **Office of Chief Counsel**
 - Tom Kim
- **Office of Chief Accountant**
 - Wayne Carnall

Navigating the Corp Fin Review Process in 2009

- **Business as usual**
- **Commitment to not impeding transactions**
- **New filing review guide**
 - AD groups and process
 - Reconsideration procedures

Filing Reviews in 2009

- **Focus on financial institutions**
- **Liquidity**
- **Fair value accounting disclosures**
- **Risk disclosures**
- **Allowances for loan losses**

Transparency at the SEC: A Key Resource for the Practicing Lawyer

SEC Website and Email Alerts

U.S. Securities and Exchange Commission (Home Page) - Microsoft Internet Explorer provided by Cravath, Swaine and Moore LLP

http://www.sec.gov/

U.S. Securities and Exchange Commission (Home Page)

Jobs | Fast Answers | Site Map | Search

U.S. Securities and Exchange Commission

SEC, CFTC Joint Meetings on Harmonization

The SEC and CFTC recently held joint meetings to seek input from the public on harmonization of market regulation. See Chairman Schapiro's opening statements on [Sept. 2](#) and [Sept. 3](#).

Other News:

- ▶ [Statement by Chairman Schapiro on Release of Executive Summary of Inspector General's Report on Madoff Fraud](#)
- ▶ [Executive Summary of Inspector General's Report on Madoff Fraud](#)
- ▶ [Chairman Schapiro Issues Open Letter to Broker-Dealer CEOs](#)

[more news...](#) [RSS Feed for SEC News](#)

SEC Seeking Public Comments On:

- Measures to Curtail "Pay to Play" Practices ...
- Measures to Help Municipal Bond Investors ...
- Measures to Improve Corporate Governance ...
- Money Market Fund Reforms ...
- Proposal to Facilitate Rights of Shareholders to Nominate Directors ...
- Measures to Increase Protections for Investor Funds Controlled by Investment Advisers ...

About the SEC

- What We Do
- Commissioners
- Upcoming Events
- Laws & Regulations
- 2008 PAR
- Office of Inspector General

Investor Information

- 2008 Annual Report
- File a Tip or Complaint
- Check Out Brokers & Advisers
- Publications
- en Español
- For Seniors

Information for:

- Accountants
- Broker Dealers
- Broker-Dealer CCOs
- EDGAR Filers
- Funds & Advisers
- Fund/Adviser CCOs
- International

Corporation Finance on the Web

The screenshot shows a Microsoft Internet Explorer browser window displaying the website for the Division of Corporation Finance. The browser's address bar shows the URL <http://www.sec.gov/divisions/corpfin.shtml>. The page features the U.S. Securities and Exchange Commission logo and the text "U.S. Securities and Exchange Commission". The main heading is "Division of Corporation Finance". Below this, a paragraph describes the division's mission: "The Division of Corporation Finance's mission is to see that investors are provided with material information in order to make informed investment decisions — both when a company initially offers its stock to the public and on a regular basis as it continues to give information to the marketplace. The Division also provides interpretive assistance to companies on SEC rules and forms and proposes new and revised rules to the Commission. For further information, see [SEC, The Investor's Advocate: Division of Corporation Finance](#)." The page is organized into several sections: "Contacting the Division" with links for General Information, Legal and Regulatory Policy Offices, and Filing Review Process; "Specific Information About..." with links for Accounting and Financial Reporting, Foreign Issuers, Small Businesses, and Disclosure; "Research Tools and Resources" with links for Statutes, Rules and Forms, Compliance and Disclosure Interpretations, No-Action, Interpretive and Exemptive Letters, Frequently Requested Materials, and Archives; and "News and Events" with links for What's New, Division Speeches and Public Statements, and Roundtables. A search bar is located at the bottom of the page with the text "Search Corporation Finance" and a "GO" button. A left-hand navigation menu includes links for "Corporation Finance Home", "What's New", "Contact Us", "Statutes, Rules & Forms", "Compliance & Disclosure Interpretations", "Accounting & Financial Reporting", "No-Action, Interpretive & Exemptive Letters", "Roundtables", "Division Speeches & Statements", "Foreign Issuer Info", "Info for Small Businesses", "Frequently Requested Materials", "Archives", and "EDGAR".

Division of Corporation Finance - Microsoft Internet Explorer provided by Cravath, Swaine and Moore LLP

<http://www.sec.gov/divisions/corpfin.shtml>

Division of Corporation Finance

U.S. Securities and Exchange Commission

Division of Corporation Finance

The Division of Corporation Finance's mission is to see that investors are provided with material information in order to make informed investment decisions — both when a company initially offers its stock to the public and on a regular basis as it continues to give information to the marketplace. The Division also provides interpretive assistance to companies on SEC rules and forms and proposes new and revised rules to the Commission. For further information, see [SEC, The Investor's Advocate: Division of Corporation Finance](#).

Contacting the Division

- ▶ General Information
- ▶ Legal and Regulatory Policy Offices
- ▶ Filing Review Process

Specific Information About...

- ▶ Accounting and Financial Reporting
- ▶ Foreign Issuers
- ▶ Small Businesses
- ▶ Disclosure

Research Tools and Resources

- ▶ Statutes, Rules and Forms
- ▶ Compliance and Disclosure Interpretations
- ▶ No-Action, Interpretive and Exemptive Letters
- ▶ Frequently Requested Materials
- ▶ Archives

News and Events

- ▶ What's New
- ▶ Division Speeches and Public Statements
- ▶ Roundtables

Search Corporation Finance

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Archives

EDGAR

Corporation Finance Transparency Resources

- **Enhanced information now online**
 - Division personnel and operating procedures
- **New web intake forms for various matters**
- **New compliance and disclosure interpretations (CDIs)**
- **Financial Reporting Manual**
- **Shareholder proposal resources**
- **Dear CFO letters**
- **Comment summaries and posting of comment letters**

SEC Priorities for 2009

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- **Enhanced enforcement**
- **Corporate accountability**
- **Improving market regulation**

Enhanced Enforcement

Enhanced Enforcement

- **New Director, Robert Khuzami**
 - New deputy director, Lorin Reisner
- **Increased staffing**
- **Revamped structure of Division**
 - Reorganization on subject matter basis
 - Five new “Specialized Units”
 - Asset Management
 - Market Abuse
 - Structured and New Products
 - Municipal Securities and Public Pensions
 - Foreign Corrupt Practices Act (“FCPA”)

Enhanced Enforcement

- **New whistleblower procedures**
- **Streamlined process for formal orders and subpoenas**
 - Delegation of authority to Director
- **End to “pilot penalties program”**

* Also note: increased transparency from Division of Enforcement – online posting of Enforcement Manual

Corporate Accountability in 2009

Accountability

Step 1: Disclosure

- Corporate governance and risk
- Executive compensation

“ but even disclosure only takes us so far”

Mary Schapiro, June 10, 2009

Step 2: Proxy Access

- Shareholder nominees in company proxy

Accountability

“Proxy access is about making boards more accountable for the risks undertaken by the companies they manage.”

Mary Schapiro, April 6, 2009

“I believe the meaningful ability of shareholders to nominate directors is intricately linked to the ability of shareholders to hold directors accountable for their compensation decisions”

Mary Schapiro, June 10, 2009

Corporate Governance

- **SEC disclosure proposals** (July 1, 2009)
 - Director experience and qualifications
 - Company specific
 - Including committees
 - Board leadership structure
 - Separate chair?
 - Why structure is best for company
 - Board's role in risk oversight process

Corporate Governance

- **Legislative proposals** (via listing standards)
 - Independent chair (Schumer and Peters)
 - Independence includes not a former officer
 - Annual election of directors (Schumer)
 - Majority voting (Schumer and Peters)
 - Risk committee (Schumer)

Executive Compensation

- **SEC disclosure proposals** (July 1, 2009)
 - Incentives and risk
 - For employees generally
 - Executive officers already covered by CD&A
 - Compensation consultants
 - Disclosure if services provided to management
 - Stock option and restricted stock expense
 - Move to grant date fair value from FAS 123R

Executive Compensation

- **Legislative proposals**

- Frank: Compensation committee provisions
 - Independence (similar to audit committees)
 - Independent consultants and lawyers
- Frank: “To reduce perverse incentives”
 - Prohibit arrangements if encourage “inappropriate risks”
 - Applies to all financial institutions
- Durbin: limit deductions to 100x average comp
- Everyone: “Say on Pay”

Director Elections

- **NYSE Rule 452 amendments**
 - Ending broker discretionary voting of uninstructed shares in director elections
 - Approved 3-2 by SEC
 - Effective January 1, 2010
- **Proxy access**
 - Allow shareholders to nominate directors using company proxy
 - Legislative mandate (Frank, Schumer)

History of Proxy Access

- **Long history at SEC**
- **Increasingly intense over past decade**
 - SEC proposals in 2003 and 2007
 - Congressional interest and new Commissioners in 2008
 - Focus for Chairman Schapiro's first year
 - June 2009 proposal
 - Issued by 3-2 vote
 - Comment period closed August 17

June 2009 Proxy Access Proposal

- **First prong: New rule 14a-11**
 - Federal right of access
 - Cannot be superseded by company bylaw
 - Available to 1% shareholders (or group) for larger companies
 - Nominate 25% of directors
- **Second prong: Revise rule 14a-8(i)(8)**
 - Permit shareholders to submit proxy access bylaw proposals

June 2009 Proxy Access Proposal

- **Divisiveness of issue reflected in comment letters**
- **SEC plans to move forward this fall**
- **Timing and effectiveness**
 - Both rules, or just 14a-8(i)(8)?
 - Impact on 2010 proxy season?

Looking Ahead

- **Near term**

- Advising companies this fall

- **Longer term**

- Which investors will use proxy access?
- When will there be no votes on “say on pay”?
- When will there be “no vote” campaigns?
- Impact of access on shareholder relations
- Impact of access on boards and directors

Thank You