

SCC Email Alert
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Subject: SEC Chairman Schapiro's Remarks on Proxy Issues

On Sunday evening, June 20, SEC Chairman Mary Schapiro spoke to the Stanford University Law School Directors College. Pasted below are comments she made on corporate governance matters, including issues involving proxy "plumbing" and proxy advisory services.

Click here to review Chairman's Schapiro's entire speech:
<http://sec.gov/news/speech/2010/spch062010mls.htm>

Thank you for your interest in the Shareholder Communications Coalition.

Niels Holch
Executive Director

Corporate Governance

Just as technology is changing the way we understand and regulate trading mechanics, it's also changing the way investors and companies interact. At the SEC, we see these changes as offering an opportunity to enhance the dialogue between boards and investors, strengthening best practices in corporate governance.

Let me be clear: the SEC's job is not to define for the market what constitutes "good" or "bad" governance, in a one-size-fits-all approach. Rather, the Commission's job is to ensure that our rules support effective communication and accountability among the triad of governance participants: shareholders, as the owners of the company; directors, whom the owners elect to oversee management; and executives, who manage the company day-to-day.

But meaningful communication means the spectrum of viewpoints is represented, and all of the company's owners have access to the information they need to persuade, or to be persuaded.

Applying these principles to our proxy disclosure rules, the SEC isn't going to decide for you whether your company's governance structure should include an independent chair, a non-independent but non-executive chair, or a combined CEO/chair. We do believe, however, that the company's investors should know why a particular board structure has been selected.

Similarly, investors should have detailed information about directors' and nominees' qualifications; about compensation consultants' fees and conflicts; and about the relationship between a company's overall compensation policies and its risk profile. As you probably know, the Commission recently revised its rules to require enhanced

disclosure in each of these areas. Before coming here tonight, I asked our staff to give me a sampling of how these amended rules are being implemented.

First, the new rules require more than the bare outline of a board candidate's qualifications, they also require the "specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director...in light of the [company's] business and structure."

I particularly like descriptions like this one, drawn from an actual proxy filing but shortened and changed just a bit, in case the director in question is here today:

"Ms. Gray — of course, not her real name — says the filing — has spent her career in consumer businesses and brings key financial and operations experience to the Company....[she] possesses broad expertise in strategic planning, branding and marketing, business development, retail goods and sales and distribution on a global scale. Ms. Gray's positions as chief financial officer and her service on the audit committees of other companies...also impart significant expertise to the Board...Through her most recent experience... including with on-line selling, Ms. Gray provides the Company with valuable insight and guidance."

Descriptions like this not only reveal the depth of the candidate's experience, they explain why those particular attributes are particularly important to that particular board.

Contrast that with another example — again, changed slightly from the original filing. In this one, each candidate presents only the bare-bones biography that has been required for decades. Then, the filing merely adds a sentence at the end of the section that essentially says: "our directors each have integrity, sound business judgment and honesty, which are important characteristics of a good board member."

We have seen the same divergence of approaches when it comes to disclosure of risk. I believe investors are informed and reassured by a proxy statement that begins with — as one recently did — a thorough discussion of the risk-related responsibilities of the board and its various committees. It then adds a detailed narrative that touches on the company's reporting to the Board and its committees about credit and liquidity risks, risk-focused auditing strategies, and the impact on risk of compensation policies.

Contrast this with a risk oversight disclosure statement that reads: "The board has risk oversight responsibility for Company X and administers this responsibility both directly and with assistance from its committees." Period. Investors might find this type of statement informative — but perhaps not quite in the way that the company intended.

Let me also touch upon another project that some of you may have heard about. Externally, it's called our "voting infrastructure" project. Internally, we refer to it as "proxy plumbing." Specifically, the Commission will soon consider publishing a concept release soliciting detailed ideas about how to modernize the voting infrastructure through which, I am told, over 600 billion shares are voted every year at more than 10,000 public company shareholder meetings.

For example, we'd like to know if proxy advisory firms should be subject to greater Commission oversight and if so, what should that oversight look like?

Proxy advisers play an increasingly important role, particularly with regard to investors who may not have the specialized expertise to weigh in on particular questions. Should there be checks on the accuracy of the information provided by proxy advisers?

Are advisers who provide services to both corporations and investors managing and disclosing the resulting conflicts of interest appropriately? Are SROs appropriately overseeing proxy distribution fees? And, in an area very near to my heart, how can we increase voter participation by retail investors?

These are only a sampling of the questions that we cannot answer alone. Just as the back-and-forth between boards and shareholders yields better decisions, the back-and-forth between regulators and stakeholders improves the process, as well. I hope that you and your companies actively participate in this concept release, because we really do need to hear from you.