

**Farewell Address of  
David M. Lynn, Chief Counsel  
Division of Corporation Finance  
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Thank you to everyone for coming this afternoon to my farewell celebration. Thank you to my distinguished panel of speakers for their very kind words this afternoon. It means a great deal to me.

My remarks here today are of course my own and not necessarily those of the Commission or other members of the Commission staff. It is hard to break the habit of saying that!

When I started thinking about these remarks last week, the newspapers were reporting how the Senate Judiciary Committee was questioning former Deputy Attorney General James Comey about that remarks he made in his farewell address to colleagues. This got me thinking that you really have to be careful about what you say in these kinds of things.

But I can assure you that none of us will be questioned on the Hill about the remarks I am about to make, unless the Senate Permanent Subcommittee on Investigations decides to look in the use of lousy jokes and dumb gags in federal government going away parties. I guess I wouldn't put it past them to commence such an investigation.

Also, Mark Vilardo, if you are out there – don't worry, I am not going to make you run down to Web Operations and post this speech on the "Division Speeches and Public Statements" portion of the website as soon as I finish delivering it.

As a preliminary matter, I do want to say that I am very sad to be leaving the Commission. While I am extremely excited to join Jesse Brill's Executive Press and work with Broc Romanek on thecorporatcounsel.net, it really hurts to leave behind such a wonderful group of people in the Division and at the Commission. While in a lot of ways my job change has to do with spending more time with my real family, it is going to be very hard for me to leave my Commission family for, believe it or not, a second time. This is truly a bittersweet day for me to leave the agency that I love so much for the second time. I am leaving not only the best job in our business, but also the daily interaction with many dear friends and trusted colleagues.

But, to get on with my remarks, as Paula mentioned, one of the many projects that I got to have a hand in was the executive compensation rulemaking project. This project had a couple of unanticipated occupational hazards along with it.

The first occupational hazard was that after reading all of those proxy statements and spending every waking (and sometimes sleeping) hours talking about salary, bonus, stock options, restricted stock, phantom stock, pensions, perks and deferred compensation, you start to get a little bit hung up about your own compensation situation.

The next occupational hazard was that given how big of a deal the rule changes were in terms of radically changing the disclosure landscape about executive compensation, that is pretty much all anyone has wanted to talk about over the past 9 months. So I, like many of you, are in a little bit of executive compensation overload.

But the one (and perhaps the only) regret that I have in not going back to private practice at a law firm is that I won't get the pleasure of directly working on the preparation of disclosures under the executive compensation rules that the Commission adopted last year and quickly amended at the end of last year.

In particular, I never got the chance to work on the centerpiece of the executive compensation disclosure, Compensation Discussion & Analysis.

For those of you who have not been following executive compensation developments, Compensation Discussion & Analysis (or CD&A) is a principles-based rule that requires issuers to provide a plain English overview of the material elements of executive compensation and an analysis of how those elements relate to the company's compensation objectives.

In the time since the first round of proxy statements started coming in this past season, there has been some debate over the adequacy of the CD&As that companies were filing, and in particular whether those CD&As were readable and prepared in the spirit of our plain English requirements.

So I thought that today might be the perfect opportunity for me to dust off my drafting skills and write my farewell speech as a Compensation Discussion & Analysis.

Stay with me here, because my thinking is that a lot of what you might say about why you work somewhere is just the kind of analysis that we are looking for in CD&A. So, I sat down in front of a blank screen and started typing, and here is what I come up with.

The Commission seeks to design its compensation program in order to provide pay for performance. We have historically paid the Chief Counsel in the lowest 25<sup>th</sup> percentile of the bottom quartile of compensation paid to professionals performing comparable services in the private sector. Under what we call our pay parity program and through generous locality adjustments, we are able to ensure that the Chief Counsel's compensation stays just north of starting salaries for first year associates at law firms. Further, annual cost of living adjustments ensure that compensation keeps pace with the cost of living, although it may be the cost of living in a third world country.

For obvious reasons, we do not pay the Chief Counsel any equity-based compensation, which is a good thing because if we did we would be hard to report in the Summary Compensation Table. We do not provide the Chief Counsel with any perquisites or other personal benefits, although we do permit him to provide modest

perks to his staff out of his own pocket, which results in negative compensation numbers in the All Other Compensation column of the Summary Compensation Table.

We have performance targets, but they are so top secret that we do not even know what they are. But you may rest assured that if the Chief Counsel were ever to come close to achieving those targets, we would move them much as Lucy pulls the football out from Charlie Brown.

Well at this point I stopped writing and started to panic, because this did not sound like plain English at all, but sounded eerily like the much maligned old Compensation Committee Report. For a Chairman's Plain English award winner such as myself, this could prove quite embarrassing.

So I did what any panicked practicing lawyer would do when faced with this kind of situation – I went online to take a look at Broc's blog on [thecorporatecounsel.net](http://thecorporatecounsel.net), where I hoped to find some guidance.

What I found there was an interesting study by an outfit called ExEquity, which recently did a study of the readability of CD&As as measured by a raft of quantitative readability scores. Among the scores was the Gunning-Fog Index, which Chairman Cox mentioned as a readability measure in a speech that he made in March.

Exequity compared a number of CD&As against some benchmarks, like the Declaration of Independence, the US Constitution, Item 402 of Regulation S-K and Dr. Suess's Green Eggs & Ham.

Since Green Eggs & Ham was the hands down winner with a Gunning Fog index of 2.7 by comparison Item 402 came in at 24.1, and this is like a golf score here I am sad to say, I went back to the drawing board and came up with version 2 of my CD&A, which went like this:

We reward good performance with some pay  
For our Chief Counsel that's all work and no play

We do not pay him with any stocks  
For his work interpreting the laws of SOX

We do not pay him with any perks  
Because even without them he still works

His deferred compensation is all tax-qualified  
And this arrangement seems to keep him mollified.

Now at this point I was really starting to panic, because while I could rate a sweet Gunning-Fog score, what I came up with was really lacking in the Analysis department, which is one problem that we have seen so far in CD&A.

So, once again, I went back online and this time I decided to pay a visit to Mark Borges's disclosure blog on [compensationstandards.com](http://compensationstandards.com). After marveling at all of the proxy statements that he has read and analyzed, I found that what he thought were some good examples of CD&A were done in a question and answer format.

So here we go again:

My first question is:

***What do we expect the Chief Counsel to do for his pay?***

First and foremost, my job is all about leading and motivating the fantastic group of people that work with me in the Office of Chief Counsel.

The 15 people that I work with in OCC are truly an outstanding group, and every day for the last four years I have thought about how to help them do their job better, how to have them develop as lawyers and how to make them want to come to work every day and face the onslaught of never-ending difficult questions.

I also get the chance to work with the great folks in the other Corp fin support offices, our Disclosure Operations group, the other offices and Divisions in the Commission, the regional offices and the Commissioner's counsels. In every case, these interactions are both fulfilling and challenging. I never have failed to learn something, even when I myself am the one doing all of the explaining.

And I think a great part of the Chief Counsel's job is participating in the training and development of the legal staff in the Division as a whole. Training throughout the Division happens through Division-wide efforts, one-on-one, through new employee training and through written training materials. Luckily I have a brilliant staff that I have always been able to rely on in fulfilling this role.

The one common thread here in all of these interactions is commitment. Everyone I deal with here is committed to our investor protection mission, but nevertheless don't go through the world with blinders on.

I have especially enjoyed working with the folks on the outside with respect to many difficult issues, both big and small. My goal as Chief Counsel has been to be as open and transparent as possible with those who come in to deal with us, while trying to treat everyone as fairly and expeditiously as possible. I thank all of those in practice that I have worked with for their assistance and understanding.

I wanted to mention a few jobs that the Chief Counsel does that don't necessarily show up on the job description. In my years on this job I have served as

- Corp Fin librarian and Division archivist
- OCC File Room Mover and Manager, out of which came the song "Movin' Amy's Files" which was sung each of the 5 or so times I had to move Amy Starr's files from one location to another.
- OCC resident technologist and blogger
- OCC Barista
- Office furniture mover
- Office furniture cleaner
- Office furniture repairman
- Courier
- Telephone call distributor
- OCC Cruise director
- Corp Fin Webmaster
- And last but not least, Traveling Salesman

On this last responsibility, I especially enjoyed my time on the road as a representative of the Commission and the Division, traveling around the country or sitting in on webcasts trying to sell all of the new rules that we have put out over the past 5 years.

By this, I mean that I saw it always as a crucial aspect of my job to go out and face the public and tell people how we think that the new rules should work and gather real-time feedback on areas for clarification. Also, I think showing people that I am willing to listen and take a practical approach to their issues and work with them on solutions.

The Next Question in my Analysis portion of the CD&A is:

***Why does the Chief Counsel show up for work every day to do all of these things?***

And to really answer this question, my CD&A has to shift away from any sort of quantitative analysis and to qualitative analysis.

In truth, I would do this job for free if I could swing it.

Quite simply, the experience here in the Division of Corporation Finance is priceless. You can't put any dollar figure on the experience here. And motivation to work hard here doesn't come from the money, but from the burning desire to do the right thing and to protect the investing public.

There are few places in the private sector or in government where you can work with such a brilliant, dedicated group of people on a never-ending parade of fascinating topics.

It is very difficult to put into words, whether in plain English or not, how proud I have been every day when I walked through the front door with the knowledge that I had the

opportunity to work with people who were so dedicated to protecting investors, upholding our statutes and rules, and figuring out practical solutions to what are usually very difficult problems.

Personally, for me the chance to make a difference in the post-Sarbanes-Oxley regulatory environment was certainly the most fulfilling phase of my career. After the corporate scandals and the enactment of Sarbanes-Oxley, I was lucky enough to come back to the SEC to apply my skills for resolving many of the complex issues that arose in implementing Sarbanes-Oxley and the related rules.

I also got the unique opportunity to work with a great group of folks on the development of recommendations on executive compensation, which as you can tell has been a topic near and dear to my heart.

But all along, my personal and professional fulfillment on all of these projects came from working with such great people both inside and outside of the building.

With that, I wrap up my Compensation Discussion & Analysis. All of those in the audience on the executive compensation review team feel free to give me your comments afterward.

I want to thank Chairman Cox, John, Shelley, Marty and Paula for not only their generous remarks this afternoon but also all of the confidence that they have shown in my over the years, and all of the opportunities that they have provided.

I would like to thank Carol and Jonathan for being outstanding masters of ceremonies today, but I also want to thank them for all of their hard work and wise counsel as my Deputy Chief Counsel's in OCC.

I want to thank all of the folks that worked hard to put on the party this afternoon, in particular Paula, Jonathan, Carol, Heather Maples, Jeff Cohan and Mark Vilardo.

And thanks to Carol Stacey for providing some of the drinks that were left over from her party earlier this week.

I would also like to particularly thank all of the folks serving with distinction in the Office of Chief Counsel:

- Andrew Brady
- Denise Branscomb
- Mary Beth Breslin
- Tamara Brightwell
- Jeffrey Cohan
- William Hines
- Jonathan Ingram
- Anne Krauskopf

- Charles Kwon
- Heather Maples
- Carol McGee
- Kim McManus
- Carolyn Sherman
- Mark Vilaro
- Ted Yu

And I would like to thank all of you OCC alumni out there in the audience who I have also enjoyed working with.

I also want to thank my wife Julie, who unfortunately could not be here today, but who did bake all of the cookies and the yummy Securities law cupcakes that you should enjoy if you have not done so already.

Finally, I want to thank everyone in the Division and throughout the Commission that I have had the pleasure of working with. I will miss you all and I wish you all the best.

With that, let's return to the festivities!!