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2020 Proxy Disclosure and 17th Annual Executive Compensation Conferences, hosted by TheCorporateCounsel.net and CompensationStandards.com

Day 2

Bill Hinman Speaks: The Latest from the SEC

Date: 09-22-20

Liz Dunshee: I'm Liz Dunshee, the managing editor of CCR Corp, which was the company behind TheCorporateCounsel.net and CompensationStandards.com. I'm going to dive in pretty quickly this morning so if you have any questions about how to navigate the platform, you can take a look at the welcome video under the home tab or if you have any questions about the conference generally you can reach out to our marketing event manager Victoria Newton at vnewton@ccrcorp.com.

So, first up this morning we have our very own Dave Lynn also of Morrison & Foerster and he's interviewing Bill Hinman, the Director of the SEC's Division of Corporation Finance.

Now, we actually had to record this interview on Friday due to some technical issues and we had carefully scheduled that to follow the SEC's open meeting last week to consider adoption of amendments to rule 14a-8s. But, of course, the best laid plans often go astray and that meeting got moved to tomorrow and then yesterday. As you may have seen in my blogs this morning that Corp Fin issued two new CDIs. So, Bill will not be covering that in his interview but he will be covering all of the other latest developments.

We don't have live Q and A during this interview but you can save up your questions for the next panel, the SEC All-Stars: A Frank Pay Disclosure Conversation. We do have a Q and A session in that one and so save your questions and I'm sure they would be happy to respond to those.

Now, before we start the interview, I want to give the standard SEC disclaimer, which is that the views that Bill expresses in this interview are his own and do not reflect the views of the commission, any individual commissioners or any other members of the staff. So, with that I will let the interview roll.

Dave Lynn: Bill, thanks very much for joining me today for the Proxy Disclosure Conference.

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Bill Hinman: Well, thanks for having me. It's a pleasure to participate in the conference and go through the agenda. It looks like it's filled with the typical corporate council, useful, practical information so I'm really happy to be part of it. Thanks for inviting me.

Dave Lynn: Great. One thing that's certainly been a mark throughout the time you've been in the Division is you've been very active on the rulemaking front and a lot of progress seems to have been made on the rulemaking agenda just this year. Is there anything you'd like to highlight about the rule makings that have been completed in 2020?

Bill Hinman: Well, thank you for the question. You're right, it's been a very busy year. The remainder of the year is chock-full as well. We would have had some 14a-8 rulemaking to talk about, I thought we would at least, but that meeting has been postponed to the day after tomorrow, the day after this is all broadcast. So, stay tuned for that. There's plenty of other rulemakings that we can talk about that have been done are to come.

This year we started out pretty early in the year with the accredited investor definition. Actually, we had that proposed earlier and then we adopted it in August. The accredited investor definition is such a central part to our private placement framework that we felt it was useful to get that done before we finished our harmonization release, which we can talk about in a bit. The most noteworthy thing about the new accredited investor definition is it's really the first step away from just looking at financial thresholds.

As you know, in 1982, Reg. D has adopted thresholds for accredited investor were put forward. They really haven't changed much since then. There's been some fine tuning but they all tie to either **netting** ____ **(04:13)** or net worth. For a while you could count your house; you can't anymore. There's adding of the spouse along the way. The new rule adds significant others, which is a big modernization.

The new rule also, sort of, takes a step away from financial thresholds and says, let's look at the sophistication of the investor. Once you qualify as a credit investor under that definition, you can invest as much as you like. So, it makes sense that we start to think about other indicia of sophistication and investors being able to fend for themselves.

So, we look through various ways that might be done. We came up with the idea of certifications of a sophistication through basically having passed a Series 7 or a Series 65 or 82 license and we open the door to all groups that think that their credentialing process is one where the folks that qualify under their credentials might be sophisticated. The commission has flexibility without having to go through full rulemaking to recognize some of these other credentials. Whether that's a CFA or you name it, people can come in, make the case and the commission can consider it ____ **(05:39)** money.

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But I'm just happy that we are starting to recognize that folks have a lot of sophistication who may not necessarily have the net worth. And maybe young people who are in the industry, they haven't accumulated the net worth yet but I think it's a step in the right direction and, as I say, there was other cleanup, spousal equivalents. Some of the entities that now qualify for credit investors are a little more rational, made some parallel changes on 144A. So, that was something we were happy to get done.

Rule 305 of S-X is another one done this year. In May, we adopted the amendments to 305. I think as your group probably totally appreciates, it's one of the more complicated rules that we've had over the years and difficult to comply with interpretations of how to apply 305. It filled half of the financial reporting manual. There were some issues around how you measured significance. 305 is the rule that says, if you have a significant acquisition or disposition, you're going to have to provide some historical financials and then there's some parallel requirements under article 11 of S-X for performance.

Just figuring out whether you had a significant acquisition or not was quite a challenge and it did, in times, result in some anomalies. So, we tried to clean that up and simplify some of the disclosures; pair it down some, modernize it. So, I think that will make a big difference as people try to get deals done; get them done in a timely way and perhaps with a little less expense. So, we're happy to see that one in the books.

Rule 310, also of S-X, another highly complex exemption actually from full reporting for subsidiary guarantors of a parent's securities. Typically, in these guaranteed structures where a parent has maybe a holding company and has assets down at the subsidiary level, we can improve their cost with capital by providing a lot of upstream guarantees. Technically these guarantees are stand alone securities under our rules and laws and so 310 was developed over the years to make sure companies could provide some disclosure about the subsidiaries but not full **'34 Act (08:04)** disclosure and still comply.

Unfortunately, the consolidating footnote originally required by 310, before we just amended, was a pretty expensive accounting process to go through and it could be pages of your financial footnotes and we thought it didn't really get the gist and the core of the information that investors needed when they were investing in securities that were guaranteed by the subs. So, we've cleaned that up. You know, 310 had gotten to the point where folks weren't using it that often. They were instead going to the 144A markets; that doesn't protect investors. So, we looked at what the 144A markets thought was material; we sought comment; we came up with what we think is a pretty rational and somewhat similar to the 144A market disclosure regime and now that is in place. And we're hoping that people do register deals more frequently when they have guarantees; that should be good for everyone. It could reduce cost to capital compared

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to private placements and investors obviously get the protection of the '33 Act ____
(09:16). So, that one got done.

Just this last month we did guide 3. Guide 3, as you know, is staff guidance around what banks and savings and loans and other financial institutions should be putting into their disclosures that are relevant to that business. We've been generally taking a look at the guides and trying to take what's good in the guides, what's still pertinent from the guides and put that into a codified regulation. With guide 3 it's now subpart 1400 of SK.

For the most part what we did there was we looked at the old guide; a lot of stuff over there overlapped with U.S. GAAP or **IFRS (09:56)** requirements. So, we tried to deduplicate the requirements and then look at the things that were really going to be potentially useful to the investors. The guidance hadn't been looked at in 30 years. So, there was a lot of clean up there and I think we've boiled it down to what we think are good useful ratios and disclosures. You know, Cecil is out and we were cognizant of that and we wanted to still provide some financial information that we thought would be helpful as people tried to sort that out as well as just generally understand the health of the bank. So, happy to see that get done.

The list is long, as you say, there's S-K 101, 103, 105; that was also done in August. I think we might talk about this separately. 101 description of the business, you know, dated back to the days when property plant and equipment were the critical things to think about. **Human (10:54)** capital and other things are more important now. S-K 101 is a little bit more principal spaced; a little more flexible. We can talk more about that in a bit. 103 was legal proceedings including environmental proceedings. The thresholds there were revisited. I don't know if you have questions about it. We can talk about some of the ways that we modified those thresholds.

And then we're trying to do something to make the risk factors more useful to people; more investor friendly. There's a requirement to do a summary if you're over 15 pages. There're some organizational things that we're asking people to think about. We're really trying to discourage generic risk factors by requiring that those get placed in their own special generic risk factor section. ____ **(11:45)** council and thinking about, "Do I want to have a generic risk factor; is that even useful?" It's probably not, so I better think about what I'm trying to cover with those kinds of risk factors and make them less generic; put them in in a way where I don't need to categorize them as so generic that they could apply to **anything (12:03)**.

So, that's not really in a nutshell, it's kind of a long description of a lot of the things we've been doing but those are some of the highlights.

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Dave Lynn: You mentioned the changes to 101 of S-K, which were welcome changes to bring us into the 21st century certainly from a disclosure process. One of the key parts of that rule change, I think, was focusing on human capital; that's certainly been an area of focus for investors for some time in the recent past. I wonder, could you tell us a little bit about what the requirement is; what sort of disclosure you would expect to see in response to the requirement recognizing that it's very principals based? And then is this the kind of thing that the staff would monitor once the rules go into effect just to see how people comply going forward?

Bill Hinman: Sure. Yeah, happy to chat about it. You mentioned that the rule now is a more principal-space rule. We have, kind of, been trying to do that as we go through our disclosure effectiveness initiatives and looking for areas where instead of having a laundry list of prescriptive requirements, we can talk about things that may be relevant but give them more in the way of examples or things that we should be considering. We have this terrific materiality framework; the MD&A does a great job of highlighting how you can think about issues that maybe material to investors. We're trying to, sort of, bring that through some of the other rules. One of the reasons we do that is, the rules age better; they're more flexible and they adopt to things.

So, if we had prescriptive human capital requirements adopted a few years ago we probably wouldn't be saying things people may be thinking about today in a work from home environment and a telework environment or where health and safety of your human capital resources are so important. But because it's a flexible approach, it's given as a topic that we expect people to think about. We have highlighted that human capital is a more important resource and when it's material we would expect disclosure around the human capital metrics and human capital resources that our materials investors should be included in in the 101 item.

So, we haven't picked a particular laundry list. There're various frameworks out there; companies sometimes use them. They may use them with their board and use them to manage their business. What the requirement is saying is, to the extent you do track human capital measures that are material to understanding your business, please include those in the disclosure. But that maybe one thing for a car manufacturer and something else for an insurance company. So, we're asking people to be thoughtful, to provide what's material; hopefully that results in disclosure that is highly relevant to investors and not something that's there just because someone was checking a box. That's sort of in a nutshell what we were trying to do with 101 on the human capital side.

Dave Lynn: And do you think it's something that, as has happened in the past, the staff will focus on from a review perspective or is it more waiting to see how the disclosure evolves over time?

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Bill Hinman: I think we'll do both of those things. Pretty quickly we get a feel for how people respond to these items and into developments. We are already seeing different kind and scope **and more (15:45)** disclosure on human capital than we had in the past. Again, probably because we're in this COVID situation where those resources are challenged and need to be protected in many ways. So, we're seeing some of that already. One of the things we like to do is go through filings, not so much with an eye towards comments necessarily but just to go through what are we seeing. Are people being responsive? Do we need to put out more guidance in the climate change? Do we put out guidance around how our various requirements, MD&A, risk factors, description of business may require climate change disclosures.

We will likely be doing the same thing on the human capital side as we see people start to get comfortable with disclosing this and come up with frameworks and I think the investor community will, to the extent that it is material, have certain expectations around what they want to see here and we'll work with the market place to, sort of, ensure that we think that we're seeing good responsive disclosure.

Dave Lynn: You had mentioned the 14a-8 amendments that are on the very, very near-term agenda in the sense of hopefully imminently to be considered by the commission. But are there other rule makings that you'd like to see done depending on the commission's priorities in the coming months?

Bill Hinman: Sure. You're right, 14a-8 is going to be out there in the week this conference is happening; beyond that harmonization. I've mentioned in the context of the accredited investor framework, harmonization is something we're working very hard on to try to get done this year. That is another area where our rules are complex. They, kind of, grew up through a variety of things either staff rulemaking, congressional mandated exemptions. Trying to step back and look at how they work together, thinking about some of the limits and then thinking about the various integration issues that come up especially now that we have private placement possibilities that allow for general solicitation. And we still have other private placement arrangements that don't. Trying to think how you can do those, not together necessarily, but in the same year or in the same timeframe without having to worry about integration or at least having better yard sticks from us on how we would look at the integration issues and **how (18:36)** there may be some safe harbors that we could come up with. We talked a lot about that in the proposing release. We got some good comments, some very technical and thoughtful comments from the bar and others and we're working to integrate that and to get that out. So, that's a priority and something that we would expect to get done this year.

The MD&A release is also one where we have a good proposal out. We're getting some good feedback, which will affect how we come out with the final rule on that **space (19:08)** but another area where, because people can see a lot of information by going

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through the Yeager filings; it's easy to click through. And do we need everything all in one document? Can we streamline the documents a bit?

And beyond that, I think COVID in particular may have been shining a light on how important liquidity capital resources can be to a company at various times? Before COVID had even happened, we were talking about that as a point of emphasis in the proposal. I think we're learning even more about the importance there and that obviously will be a feature of the final release that we have a strong emphasis on liquidity and capital resources. So, that's another one that we're striving to get done this year.

Dave Lynn: You mentioned the light that COVID shone on liquidity and the commission and the staff have had to grapple with the effects of COVID on public companies and on its own staff and the markets in general. What do you think of, sort of, the most notable commission and staff actions in response to the pandemic and are there more things we should expect to come along as things proceed?

Bill Hinman: Sure, thanks for the questions. First of all, before we even talk about the things we've done that are external _____ (20:45), I just wanted to say I know a lot of folks that follow corporate counsel and prepare corporate counsel columns; a lot of ex-staffers. You'd be very proud how the staff at Corp Fin have managed through COVID. We really haven't missed a beat. Corp Fin is a division that works well remotely, in general. We were maybe one of the more active users of the telework system even before COVID. When we all went out in mid-March, people had really been very productive and able to do things like provide guidance quickly and monitor what's going on. So, I've been very proud of the team.

As I said, we did get guidance out relatively quickly. One of the things that was happening with folks all at home, for the first time it was right at the close of Q1. We were concerned about companies being able to be timely filers. We didn't want a lot of delinquent filers simply because it was difficult to close a quarter remotely. It was also a quarter where there was a lot of uncertainty about future business so it raised a lot of impairment questions. We knew that issuers would be reaching out to impairment consultants and accounting firms that sort some of those issues.

So, we thought there'd be a real time crunch so we gave, as everyone knows, a fair amount of flexibility in terms of filing. If you were having COVID related issues and you identified it as such in a 6-K or an 8-K, you got more time; you have 45 days of additional time to do a filing. Almost close to 1000 companies, I think, took advantage of that and I think it was a useful thing to do. At the same time, we very much wanted people to be out there providing disclosures. So, we thought about what's it going to be like to do an earnings call in this environment and we gave some flexibility there indicating you need

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to put out numbers that are in ranges or estimates if you want to reconcile your non-GAAP disclosures to those numbers; that would be reasonable.

The chairman and I both put out statements and put out a joint statement about the importance of that information to the marketplace; how we wouldn't second guess good faith estimates. A lot of folks asked us, "How do we know whether somethings a good faith estimate or how would you know (the SEC) if the look into this?" And we've been trying to make it very clear in forms like this one and elsewhere that one of the things that we look at and we would hope people strive to do is be very consistent in the disclosure. So, if you're saying one thing on your earnings call, hopefully that's very consistent. How you're talking to the analyst community. How you're talking to your vendors, your landlords, about your cash position. And that if you're talking about how long your cash will last or what constraints you have or issues you're facing that that's a consistent story across a very wide variety of constituencies. So that's what we would look for and I think if you're managing the company based on what you're telling people you're probably going to be fine.

So, we encouraged a lot of that and we've put out, as you know and as the corporate council followed, a couple disclosure guidance topics, 9 and 9A. The first was to do, kind of, what we talked about a little while ago, take a look at what we were seeing in disclosures; try to identify good practices; think about questions we would ask issuers to consider as they frame their disclosure. And really give people a sense of what we were thinking of as potentially important topics to understand. To provide insight to your investors around obviously in conjunction with our rule base. Where do our rules call for various information that could be materially related? And try to highlight where that was in that disclosure guidance.

And then 9A came out as we were getting close to the end of Q2 and there we really did start to see that because the constraints on the economy were continuing, the liquidity was so important. People had raised records amounts of money in the quarter. Cash was king; people were husbanding cash in different ways. Different companies were facing different challenges. So, we really emphasized some of the things that we would hope people would try to talk about particularly in the liquidity parts of their MD&A and put that out.

So, we did not extend the filing deadlines for Q2 based on a lot of calls that people like yourself and others that have their finger on the pulse of the issuer community, the accounting firms and law firms and issuers themselves. It felt like people had figured out how to do a close remotely; that the cost/benefit of giving another extension really wasn't there. And people weren't asking for it so we did not do more filing extensions for Q2. We did do a few things that helped the process. We made it easier to sign documents remotely. We did some things for our own benefit to be able to review physical

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documents by taking them in through emails we normally would have taken through the mail; things like that. For the most part we didn't need to go beyond that in terms of logistical accommodations.

Dave Flynn: Yeah, I think the CF Disclosure Guidance topics are really helpful because they gave a great framework to work with; really a nice checklist in the questions of things to think about. And I think that proved helpful from my perspective and I know from others perspective as well. Now that we're entering another reporting cycle, what has been your impression of the disclosures that have been made just generally in terms of compliance with the expectations the staff had set out? And then, sort of, as we move forward into the proxy season and the like, what do you think people will have to be thinking about as they start drafting their compensation discussion analyses as people revisit the ways in which they're going to measure performance for 2020?

Bill Hinman: Sure. Well, in terms of what we've seen, I would say overall, I think we're fairly pleased with the disclosures we are seeing. We think, as the chairman has highlighted in a statement he and I made, these disclosures are helpful not just for investors they're helpful for everyone as we're trying to sort out what's the impact of COVID on the economy. Many public companies look to other public company filings to, sort of, understand where their customers are or where their vendors are or how they're doing or what other people are doing to deal with issues.

The quality of the disclosure you see in the U.S. system, because it comes with a fair amount of rigor, when you make a statement in a filing with the SEC, it has liability consequences. The private bar is reading it; people vet those statements very carefully and are thoughtful about what they put in these documents. If you or I read something in these documents, I think they'd have a level of seriousness and rigor behind them that you don't necessarily find in some companies press release or discussion people may be having outside of our document.

So, I think they're incredibly useful. I think people talk an awful lot about the impact of COVID on their human resources and human capital. No one really knows exactly how long this lasts; how long it hits their business but we got enough information that I think people either have a sense of what a company thinks it's capital needs will be over the next 12 months or at least they know enough about the components of what those needs will be. And you can make your own assumptions around how long this lasts or what the business environment looks like and have a pretty good feel for how that company may fair. So, I would say overall we are pleased.

Obviously, there are situations where we have seen some lack of consistency between the disclosure to investors and other constituencies and we look at that seriously and especially in this environment we take that very seriously. You mentioned the CD&A

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and how will that look and how does a comp. committee deal with CD&A this year. Comp. committees are going to earn their keep this year. They already are because the exercise of trying to preserve cash have modified their compensation plans, they've cut back on bonuses. In some instances, the companies have done very well and management has worked very hard and comp. committees, I know, are thinking of restoring some of these plans as they get through this.

Whatever the plan was on January 15th, when comp. committees meet and start figuring this stuff out, it certainly changed. So, it won't be the typical CD&A; I don't think that we'll be reading for the most part this year. Comp. committees has good fiduciaries. We'll just have to describe the thought process that they've going through and both on maybe some of the decisions at the front end where they were cutting and then any decision where they restored. And then just trying to be fair to their management team and motivating their management team as they lead a company through these challenging times. So, I think it'll be interesting reading this year but I don't think it'll fit any known pattern that we've seen before.

Dave Flynn: I definitely agree with that. Speaking of CD&A, I guess the disclosure effectiveness initiative that we were talking about earlier has covered quite a lot of ground. So many items of S-K and S-X have been revisited and a perennial question that this conference is, will you look at the competition disclosure framework as part of the disclosure effectiveness initiative?

Bill Hinman: Yeah. Well, I'm sure many in your group are aware of the rulemaking agenda that the commission puts out and it's published. We don't have any executive comp. S-K rules on the short-term agenda and I don't think there are many on the long-term agenda. So, it's not something that's imminent. As we've pointed out and as we've been talking, there's been a lot of other things on our plate and it's just that area has been looked at a little bit more recently than some of the things that we have tried to address and so that was a little further down the list.

Notwithstanding that, I think one of the things that this chairman has talked a lot about; I've talked a little bit about it in some of the speaking that I do is just the idea of good corporate hygiene. We started talking about this a little bit with the cyber release and company trading policies are obviously something that companies adopt and try to make work for themselves and something that we ask that they get disclosed. But we don't get highly prescriptive on saying what has to be in each particular trading policy. But we did talk in connection with the cybersecurity release around the benefit of having a policy that makes it where executives, whether they even know or don't know about a brewing potentially material cybersecurity risk that they generally are not trading even if they don't personally know that. The plan, sort of, has a process to think about the potential materiality; it has prophylactic arms there that would prevent some of that trading.

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One of the things I think the markets get most upset about is they see a major material cyber breach and then trading has happened and it's like, "How could that have been?" It well may be that one of the insiders didn't know about the breach at the time they traded but counseled it or enough people did. We were asking everyone to think about shaping policies where that kind of event, which shapes the market's confidence in public companies would happen less frequently or not at all.

I think that idea has also gotten some backing on Capitol Hill. We've seen some legislation get introduced that talks about if there's something that would require NAK disclosure, insiders can't be trading before it is announced regardless of whether the executive officers **or directors (34:33)** themselves know about the event. You basically have to do something along the lines of, **you were suggesting, might be a good _____ (34:39).**

There's a whole range of things that are, kind of, in this area of corporate hygiene that we would hope people would be thinking about. Corporate America has spent a lot of time in the last few months in particular looking at corporate purpose. You know, does the corporation have a purpose beyond trying to maximize shareholder returns and who are the other constituencies that might be interested in corporate purpose? That's stuff that's outside of our _____ **(35:11).**

But we do have rules where if a company is thinking about being a good corporate citizen, there's way to apply our rules where you can be thoughtful and you have prophylactic policies. We've been talking an awful lot about our principals-based disclosure system; that gives companies a fair amount of flexibility in deciding what's material. Are people using that flexibility to provide a really thoughtful, insightful, concise set of disclosures or are they trying to tip toe through the tulips on some difficult issues that they don't want to share yet?

I think as people are thinking about corporate citizenship and building confidence in the company and serving a wide range of constituencies well, you start with some of these hygiene issues. 10b5-1 plans, there are people being thoughtful about the intersection of a company's 10b5-1 plan to buy back stock and executives who may have parallel plans, who may also have had some influence on when they buy backs are happening. Is there a good process in place to make sure that that looks fair to all investors?

Stock option pricing and issuances, we've seen a couple instances in the COVID era around things becoming particularly material for a company and options either being granted ahead of time or **per price (36:45)**. Stock option pricing, most plans require for fair market value pricing. Boards and the people that administer the grants have to be comfortable that fair market value is really being met or take an accounting charge

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potentially. There are accounting consequences if something's not at fair market. There are some difficult issues that come up if the company is sitting on highly positive, highly material information that hasn't been shared with the market. Whether you get second guessed by your auditors on FMV or whether it just looks awkward and it looks like people are being awarded for things that have already happened when it's supposed to be an incentive plan.

Again, these are things where our rules have some bearing but they don't probably go to some of the judgement calls that the comp. committee and the board and management need to make around these things to the extent people are thinking about corporate citizenship and serving, not just their own investors but, other investor's marketplace and people who deal with that company. I think these are things worth thinking about and it's a way to, sort of, start at home as people become more interested in some of these issues around the purpose and guidance of a corporation.

Dave Lynn: Yeah, I think that's very helpful and certainly something that can influence what people tell their stockholders about their approach and it's very much of interest, I think, to stockholders going forward. One thing that I think that I'd be interested in your thoughts on, pre-pandemic the staff announced a new approach to shareholder proposals where there was, sort of, more transparency through a list that was provided on the website and the staff had some discretion in terms of which letters to answer in full and whether to answer them at all. How did you think that all worked out and is that something that's going to continue in future shareholder proposal seasons?

Bill Hinman: Yeah. Well, thanks for that question. I think it worked well and I don't think I'm alone in that. In fact, I know I'm not alone in that because we've had our annual stakeholders meeting on the shareholder proposal process with leading members of the proponent committee as well as the issuer community and law firms you're familiar with. We did it virtually this year and we heard generally good feedback on how the chart-based approach to communicating our responses was received. This was an idea we had last year; when we first started articulating it, I think people were a little bit reluctant to embrace it. I think they didn't know what it would look like. They were a little nervous that this would somehow change the balance or the way that we administer the rules.

Really it was designed to just be more efficient and to communicate pretty clearly. You know, where we were coming out without having to do a long staff response letter for every single request. We get an average 250 to 300 of these letters in a season. It takes a lot of staff time to sort that out and I think the staff does a terrific job in that but I would say in the great bulk of the letters they're somewhat routine. There's not new law or even new guidance. The facts are always a little different in each one so each one

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adds a little bit to the mosaic but there are a lot of letters that really were not newsworthy.

What we thought we would do was instead of issuing a full letter every time, put where we were on a particular letter **in a (40:44) chart, you (40:45)** could see the basis for the staff either agreeing or disagreeing with an exclusion request. We came up with the idea and put the idea out right last year and we wanted to make sure that we had a chart that was available and worked for the season. So, we didn't have a lot of time to fine tune the chart to make it interactive and do all the bells and whistles you could do on something that the tech people spent some time on and make easily searchable or recategorize different columns all that. We couldn't do that; we didn't have time for that. We did a simple chart and I think it worked really well.

I think 90% of the letters were responded to through the chart; 10% got staff responses. Because we did fewer staff responses, we had more time to give more detail on those responses. So, when we did issue a letter it was something that we thought was potentially a little bit more novel or something where explaining our thinking was useful so we had time to do that. I think people appreciated that and I do think we got a lot of good feedback both at the stakeholders meeting and otherwise that will help us make the chart even more user friendly and even more useful for people trying to understand our thinking in real time in the course of a season. So, I'd say the experiment is largely a success; I think we're going to be able to improve on it and really appreciate the input we're getting from people.

Dave Lynn: That's great. Yeah. One area of disclosure we've seen attention placed on and certainly the staff has been focused on it, has been diversity and diversity of companies board of directors. Just last year the staff put out some compliance and disclosure interpretations interpreting items 401 and 407 and, sort of, how those interact with the types of disclosures someone might make about diversity of directors. How is the staff perceiving the current approach the companies are taking from a disclosure perspective and is there more that would be done or you'd like to see be done on the diversity disclosure front?

Bill Hinman: Right. Well, what we did do before I got to the division; what the staff had done is they had been talking to issuers about how they prepare this part of the proxy and the disclosure around diversity and what were they currently doing and what could potentially work. We've seen a wide range of issuer approaches here from matrix that lay out ten different types of diversity and the board is willing to share where each member fits on each square; whether a particular topic is applicable or not. I think the investors that see that have a lot of information and they find that useful.

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But we also found that a number of companies were telling us that this was a sensitive topic with their board; that not every board member necessarily wanted to be identified on some of the criteria that were being discussed. Self-identification wasn't always happening and there's some tension as well with some board members around, yes, I do fit into these various diversity characteristics or I don't but I would've thought and I'm here, not because I fit that box, I'm here for my experience in the tech industry or whatever it may happen to be.

So, there was a little bit of sensitivity to that as well. As we looked at our own rules in this space, we do have requirements. If you are going to take diversity into account, tell us how you do that and tell us how it's applied. And then, as you've decided who is eligible to sit on your board, if you've taken diversity into account, again, tell us how you've done that. What we try to do with the C&DI was to say, "Remind everyone that these exist; to the extent you're taking these into account, we would expect them to be disclosed." But we also said, "We do think it has to be a self-identified diversity characteristic."

So, it's very hard for a secretary's office to decide this person fits this particular ____ **(45:38)**. You might be able to figure out gender but pretty quickly you can get into a range of things where someone has to make a judgement or the person's self-identifying and they feel comfortable with that being in a public document. So, we said, "When there's self-identification of the characteristic and the characteristic was something you took into account, our rules in effect require you to disclose that." So, that was a reminder.

We've seen people provide more disclosure almost each year in this area. Some of that's driven because investors want to hear about it and they were asking for it. There are different groups that were pushing for it. But, again, we are trying to be very sensitive to the considerations I was talking about as we put mandates out there in this area. We do have a framework; we think it can work and there's lots of ways for investors and the company to engage on this so we're, kind of, happy of where it is now and hope to see more diverse **boards (46:41)** and more action in these areas. We strongly believe diversity on the board is very valuable but we have a disclosure framework; do merit based types of disclosures. We think the disclosure framework here can work and I think it is working.

Dave Lynn: Thank you so much. Well, thank you Bill for joining us at the Proxy Disclosure Conference and we really appreciate all of your insights.

Bill Hinman: Well, it's been a pleasure. Thanks for inviting me. Take care Dave.

Dave Lynn: You too. Thank you.

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Liz Dunshee: And thank you Bill if you're watching. It's always great to hear straight from the director and so we appreciate you taking the time to talk with us this morning. I did want to note if you're experiencing any browser problems you should just refresh and that will bring the video up again. And it is helpful to have that chat box up next to the live streams so that you can see any technical related announcements as well as the CLE codes and the links to enter those.

We now have a break until 10:30 a.m. Eastern Time. So, I will see you back here then for the SEC All-Stars: A Frank Pay Disclosure Conversation. You can just go back on your agenda and then enter that room to join that panel. Thanks a lot everyone.

Markeys/657:es