

Meridian Client Update

SEC Publishes Updated Regulatory Flexibility Agenda Securities Exchange Commission Agenda includes a number of executive compensation and corporate governance related rulemaking proposals.

On June 22, 2022, the SEC published its Spring 2022 Regulatory Flexibility Agenda. The Agenda identifies SEC Chair Gary Gensler’s priority rulemaking initiatives and rules that could be forthcoming in the next 12 to 24 months. A number of the Agenda items were carried forward from the Spring 2021 Agenda, while others are newly added or updated target dates for the issuance of rules. The Agenda includes the following rulemaking proposals on executive compensation and corporate governance related matters:

Topic	Rulemaking Stage	Description	Target Date for Issuance of Rule
Clawback Policy (Dodd-Frank mandate)	Final Rule	Implement rules directing national securities exchanges to require listed companies to adopt a clawback policy and disclose such a policy	October 2022
Climate Change Disclosure	Final Rule	Disclosures regarding climate-related risks and opportunities	October 2022
Pay Versus Performance Disclosure (Dodd-Frank mandate)	Final Rule	Disclosure on the relationship between executive compensation actually paid and financial performance	October 2022
Proxy Voting Advice	Final Rule	Revisions to final rules adopted in 2020 regarding proxy advisors’ voting advice	October 2022
Share Repurchase Disclosure Modernization	Final Rule	Disclosure about issuers’ repurchases of their equity securities	October 2022
Human Capital Management Disclosure	Proposed Rule	Enhance disclosures regarding human capital management	October 2022
Shareholder Proposals	Proposed Rule	Revise rules adopted in 2020 regarding shareholder proposals	October 2022
Rule 10b5-1 Trading Plans	Final Rule	Subject Rule 10b5-1 Trading Plans to additional conditions	April 2023
Board Diversity	Proposed Rule	Enhance disclosures about the diversity of board members and nominees	April 2023

The SEC is under no obligation to meet its self-imposed deadlines under the Agenda and often does not.

Notable Commissioner Dissent

Upon the release of the Agenda, SEC Commissioner Hester Peirce issued a statement harshly critical of the Agenda. In the statement, Commissioner Peirce declared the:

Securities and Exchange Commission sets forth flawed goals and a flawed method for achieving them. The Agenda continues to shun issues at the core of our mission in favor of shiny objects outside our jurisdiction.

Ms. Peirce then launched a fusillade of criticisms against the Commission:

We used to focus on companies' disclosure of economically material information; we now focus on disclosure of hot-button matters outside our remit. We once sought to protect retail investors; we now rush to the aid of professional investors. We once worked to help small and emerging companies raise the funds that are their lifeblood; we now work to increase their costs and shrink their investor base. We once hoped to increase the ranks of public companies by making it less costly and more beneficial to be public; we now look for ways to force companies to go public since we are making it costlier to go public and be public."

Regarding the rulemaking process, Ms. Peirce notes,

[t]he Agenda's timetables reveal that the rush of radical rulemakings remains relentless, despite pleas from almost every type of market participant and other interested party that the Commission slow down so that the public can catch up and provide meaningful input on our outstanding proposals.

Ms. Peirce is one of two Republican appointed Commissioners, therefore her commentary may not gain much traction among the other three Democratic appointed Commissioners. Nevertheless, it may gain traction with some in Congress as well as with market constituents and, in the process, bring pressure on the SEC to rationalize its rulemaking initiatives.

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The **Client Update** is prepared by Meridian Compensation Partners' Governance and Regulatory Team led by Donald Kalfen. Questions regarding this Client Update or executive compensation technical issues may be directed to Donald Kalfen at 847-235-3605 or dkalfen@meridiancp.com.

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