



Regulation: The Ever Present Backdrop to IR

What's New, What's Not

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Meredith Cross

- Duke University undergrad; Vanderbilt University Law School
- Early Legal Experience including Securities Law
- SEC Division of Corporate Finance ('90-'98)
(Deputy Chief Counsel, Chief Counsel, Associate Director, Deputy Director)
- Partner - Wilmer Cutler Pickering Hale and Dorr ('98-'09)
- SEC Director, Division of Corporate Finance ('09-'12)
- Partner - Wilmer Cutler Pickering Hale and Dorr ('13- Present)

Meredith Cross

SEC Director, Division of Corporate Finance ('09-'12)

- Oversaw disclosures of more than 9,000 public issuers
- Dodd Frank Wall Street Reform and Consumer Protection Act
- JOBS Act
- Recommended nearly 60 rulemaking releases to the Commission

(Say on pay, compensation committees/advisers, proxy disclosure, shareholder nominations to corporate boards of directors, proxy process review, rules related to asset-backed securities, rules regarding representations and warranties, offering process for asset-backed securities, required risk retention, enhanced disclosures in offerings, conflict minerals, mine safety, resource extraction, many others)

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What's New, What's Not

Impact of Election on the SEC and public companies?

- More flexibility under SEC rules? Not exactly!
- Quick impact on public companies? Unlikely.

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What's New, What's Not

Remember, the SEC is an “independent agency”
(not actually part of the Administration)

- Chairman and Commissioners appointed by President, but funding comes from Congress
- Will need a Chairman and two commissioners
- New Chairman likely would be influenced by Administration, but not as much as one might expect
- Senior staff usually turns over (Corp Fin Director, Enforcement Director), but many career staff stay on long-term

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What's New, What's Not

Impact of Election – easy short term predictions:

- SEC will “pause” on any additional Dodd Frank rulemaking, and may delay effective date of pay ratio
- Review program in Corp Fin will likely continue as-is
- Regulation FD still a key regulator for companies and IROs
- Non-GAAP measures interps will not change in the near-term

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What's New, What's Not

Impact of Election – easy longer-term predictions:

- Enforcement will shift away from “broken windows” approach
- SEC will move forward to modernize disclosure
- Impact of proxy advisory firms will be a focus
- Deregulatory rulemaking for small and mid-sized companies
- Congress, not the SEC, will control most of the decisions on which Dodd Frank Rules are rescinded (e.g. conflict minerals, say-on-pay)

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What's New, What's Not

What else? **Pressure is UP** on IR professionals!

- Reg FD is now deeply embedded, even if enforcement focus seems less sharp
 - Be very careful about small group meetings that are written up by analysts
 - Whistleblowers provide tips on everything, including FD

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What's New, What's Not

What else? **Pressure is UP** on IR professionals!

- Reg G/Non-GAAP Measures
 - Interpretations and crack down are very important to the staff
 - Enforcement sweep - gathering emails that show how earnings release drafting process unfolds
- Different means of communicating with investors: Dealing with Reg G and 10b-5 with word limited Tweets



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Q&A