Securities Regulation Daily Wrap Up, SEC NEWS AND SPEECHES—Roisman to take the lead on SEC's efforts to improve proxy system, (Feb. 11, 2019)

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Speaking to Investor Advisory Committee members, Chairman Clayton also requested input on how the Commission should approach human capital disclosure requirements.

SEC Commissioner Elad Roisman will head the Commission's project to improve the proxy voting process and infrastructure in the U.S., Chairman Jay Clayton announced in a recent statement to members of the SEC's Investor Advisory Committee. His remarks, which were made during a telephone call with the IAC, also made clear his reluctance to implement rules or guidance regarding human capital disclosure that would rigidly apply to all public companies.

Proxy system. Roisman is being tasked with finding solutions to problems with the proxy system on the heels of November's SEC-hosted roundtable on the U.S. proxy process. Clayton noted in his statement that there is broad agreement that the current proxy solicitation and voting process (often dubbed "proxy plumbing") needs a broad overhaul. Roisman will take the lead on the SEC's efforts to consider improvements to proxy plumbing and to the proxy process generally.

In his statement to the IAC, Roisman called the current state of proxy plumbing "inefficient, opaque, and unreliable in its accuracy." In particular, he pointed out concerns about the recommendations of proxy advisory firms and asset managers' voting practices, which he also raised at the November roundtable. In his roundtable statement, Roisman had questioned whether the two largest proxy advisory firms (Institutional Shareholder Services and Glass Lewis) adequately manage conflicts of interest and whether fund managers who rely on proxy advisors' recommendations are seeking to maximize shareholder value. He also questioned how they approach casting proxy votes when they manage funds with different objectives, such as ESG-focused funds.

Proxy advisory firms have also faced increased attention from the legislative branch. During the last Congress, Sen. Jack Reed (D-RI) introduced S. 3614, which would require the largest proxy firms to register with the SEC under the Advisers Act. In December 2017, the House passed H.R. 4015, which would have required all proxy advisers to register under a new section of the Exchange Act.

Chairman Clayton implored market participants to continue to submit suggestions on how to improve the proxy system. Several market participants have already submitted comment letters on the topic, including the Chamber of Commerce, the Council of Institutional Investors, the Investment Adviser Association, and a coalition of public companies.

Human capital. In his remarks about human capital, Clayton observed that the current human capital disclosure requirements of Regulation S-K Items 101 and 102 date back to a time when companies relied significantly on plant, property, and equipment to drive value. There has been a shift from human capital being viewed as a cost to an essential resource and driver of performance for many companies, Clayton said. Each industry and even each company within a specific industry has its own human capital circumstances, Clayton noted, adding that he was wary of jumping in with rules or guidance that would "mandate rigid standards or metrics" for all public companies regarding human capital disclosures. As an example, Clayton stated that the material human capital information for a manufacturing company would be different from that of a biotechnology startup company and different from a large healthcare provider.

Clayton also advised that some metrics can provide reasonable market-wide comparability (such as U.S. GAAP), while others are only possible at the industry or even company level (such as non-GAAP financial measures). According to Clayton, for human capital disclosures, it is important that the metrics allow for period-to-period comparability at the company.

The Human Capital Management Coalition (HCM Coalition) petitioned the Commission in 2017 to adopt rules to require issuers to disclose information about their human capital management policies, practices, and performances. According to the HCM Coalition, human capital is "nearly invisible" in the Commission's current disclosure rules. The Coalition also said that, while some disclosure requirements can be tailored more precisely, there is "broad agreement" that certain categories of human capital disclosure should be required. These include workforce:

- demographics (such as full-time and part-time workers);
- stability (such as turnover and internal hire rate);
- skills and capabilities (such as training and skills gaps);
- culture and empowerment (such as union representation);
- health and safety (such as work-related injuries);
- productivity (such as return of cost of workforce);
- human rights commitments; and
- compensation and incentives.

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