

## [Securities Regulation Daily Wrap Up, TOP STORY—Jackson calls on Commission to complete Dodd-Frank rulemaking, \(Nov. 9, 2018\)](#)

Securities Regulation Daily Wrap Up

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By [John Filar Atwood](#)

Calling the SEC's failure to pass unfinished Dodd-Frank rulemakings "profoundly troubling," SEC Commissioner Robert Jackson called on the Commission to finalize the rules on clawbacks, pay versus performance, and employee and director hedging as soon as possible. In remarks at Practising Law Institute's conference on securities regulation, he asked how the SEC can hold corporations accountable when it is not accountable to Congress for implementing the Dodd-Frank provisions.

With regard to clawbacks, Ropes & Gray partner Keith Higgins—an architect of the clawback proposed rules while he was director of the Division of Corporation Finance—said that the proposals were targeted at specific instances when money is paid to executives even though the company does not meet its numbers. The proposals were criticized, he noted, because they gave no discretion to the board about whether or not to go forward with the clawback.

Jackson questioned whether the board should be given that discretion. In his opinion, if the board is going to have discretion on clawbacks, then there will need to be an accompanying disclosure requirement. A board should have to file a Form 8-K explaining why it did not pursue a clawback, he suggested, and what the expected cost to the company is for not clawing back the compensation.

The Dodd-Frank Act is the law of the land, Jackson said, and the SEC cannot pick and choose which of its mandates to implement. He acknowledged that the pending proposals may not be perfect, but urged the Commission not to let the perfect be the enemy of the good in this instance. It is time for the agency to overcome its eight-year failure to implement the Dodd-Frank requirements, he said.

**Cybersecurity.** Jackson also touched on cybersecurity, which he called the foremost corporate governance issue facing companies today. He noted that despite a growing number of cyber incidents, very few have led to disclosure on Form 8-K. There is no point in trying to hide the information, in his opinion, because the market is going to find out anyway. Failing to provide disclosure simply allows some people to trade with information that others do not have, he added.

Despite the Commission's 2018 guidance on cybersecurity, there is not as much information in the marketplace as there should be, Jackson said. This is not a problem for which the market has provided a solution, he noted.

The main corporate governance challenge of coming decade is helping boards of directors manage cyber threats, according to Jackson. The SEC should provide clearer guidance, he said, but he also called on industry participants to help develop best practices in the boardroom to deal with cyber issues. The Commission will need help grappling with the problem of not wanting to call for disclosure that will provide a roadmap to other hackers, he stated.

**Semi-annual reporting.** In a Q&A session following his remarks, Jackson was asked to comment on the President's tweet suggesting that the SEC consider a move from quarterly to semi-annual reporting. Jackson acknowledged that it is a hotly debated question since many in the industry feel that quarterly reporting contributes to short-termism. In his view, the Commission should examine the question and ask for comments from the public.

Companies do manage to the quarterly numbers, he noted, because the market hits them hard if they do not. It might be time for the Commission to consider guidance on this topic, he suggested.

Jackson noted that the question about semi-annual reporting is not a hypothetical one. The U.K. allows its companies to choose to report semi-annually, he said, and companies there prefer to report quarterly. One thing the Commission should not do, in Jackson's view, is force companies to report less frequently than they want to. Mandating semi-annual reporting would be a mistake if companies would rather report quarterly, he said.

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