

Meridian Client Update

SEC Releases Rulemaking Agenda for Next Twelve Months

The Securities and Exchange Commission (SEC) recently released its Spring 2020 Regulatory Flexibility Agenda (“Reg Flex Agenda”), which identifies rule-making initiatives that the SEC expects to address over the next year and beyond.

In its latest semiannual Reg Flex Agenda, the SEC identifies the following rule-making initiatives as among those that the SEC expects to address in the short-term – potentially by October 2020.

- Revised **proposed** rule on mandatory recoupment (or “clawback”) requirement and related disclosure.
- Final rule amendments regarding the thresholds for shareholder proposals under Rule 14a-8.
- Final rule amendments to regulate proxy advisors (e.g., to limit their reliance on exemptions from the SEC’s proxy solicitation rules, which we described in Meridian Client Update dated November 26, 2019).

Earlier this week, the SEC announced that it would hold an open meeting on July 22, 2020 to consider final rules to regulate proxy advisors. Specifically, the SEC will consider whether to take the following actions:

- Adopt proxy rule amendments to provide investors who use proxy voting advice with more transparent, accurate, and complete information on which to make voting decisions, without imposing undue costs or delays.
- Issue additional guidance to investment advisers regarding their fiduciary duties related to their proxy voting on behalf of clients.

The SEC’s Reg Flex Agenda also identifies the following rule-making initiatives as among those items that the SEC views as longer-term actions:

- Final or revised proposed rule on pay versus performance disclosure.
- Propose amendments to the proxy rules to require additional disclosure about the diversity of board members and nominees.
- Final or revised proposed rule on incentive-based compensation arrangements at certain financial institutions that have \$1 billion or more in total assets.

Meridian comment. SEC Chair Jay Clayton has stated that the SEC’s regulatory agenda “had become too aspirational” and expressed a commitment to focus the Reg Flex Agenda to increase transparency and accountability. Given that rule-making on the mandatory recoupment policy and related disclosures,

and on shareholder proposal thresholds appear on the SEC's short-term Reg Flex Agenda, it is possible the SEC will issue a revised proposed rule in 2020. However, the SEC is under no legal obligation to meet the Agenda deadlines and routinely fails to do so. Separately, the SEC appears poised to adopt final rules on proxy advisory firms at its July 22 meeting.

Many large public companies' governance policies and proxy disclosures already take into account, to varying degrees, a number of the SEC's proposed rules. Nearly all large public companies have adopted clawback policies that provide for the potential recoupment of "excess" incentive compensation linked to a financial restatement. Some clawback policies have been expanded to permit recoupment of compensation due to an employee's misconduct (e.g., violation of company policy or causing reputational harm) not related to financial restatements.

Over the past several years, pay-for-performance disclosures have increased in prevalence. However, the substance and form of these disclosures vary widely, with few fully compliant with the SEC's proposed rule. Lastly, companies have begun to enhance their disclosures on board diversity; however, few company disclosures reflect calls for disclosures on self-identified diversity characteristics of board members (e.g., race, gender, ethnicity, religion, nationality, disability, sexual orientation, or cultural background) by individual.

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The **Client Update** is prepared by Meridian Compensation Partners, LLC. Questions regarding this Client Update may be directed to Donald Kalfen at dkalfen@meridiancp.com.

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