



SEC Pending Issues

Regulatory Reform

The SEC will have to assist Congress as it reviews likely reforms to the U.S. financial services regulatory structure. The agency will need to be clear with respect to the importance of market regulation, investor protection and other issues that have been less prominent in this time of focus on systemic risks.

15a-6 and Mutual Recognition

In 2008, the SEC signed a mutual recognition agreement with Australia (and announced that it was discussing a similar agreements with Canada) and also proposed amending Rule 15a-6 to provide a broad exemption from U.S. securities laws to foreign broker-dealers. Many questions and concerns were raised about both these initiatives. The SEC will need to decide whether to proceed with or amend these initiatives going forward.

Consistency of Investor Protection across Retail Products

The SEC and other agencies need to work toward greater consistency of investor protections across retail products. Under the SEC's jurisdiction, financial professionals marketing securities to retail customers may be registered as broker-dealer representatives or as investment advisers, and the oversight regimes and customer protections can greatly differ between the two. The SEC commissioned the Rand Study in 2006, but has yet to act on the Study or its underlying issues.

Accounting Standards

FASB and IASB have been working to align U.S. GAAP with IFRS. The SEC this week published a schedule and roadmap for transition to IFRS. There is concern in the issuer and consumer communities about IFRS.

Proxy Access

The SEC faces criticism for its decision in December 2007 to interpret its Shareholder Proposal rule broadly, thus making it more difficult for shareholders to place their own nominees on company proxies, and has indicated a willingness to re-examine the issue. The 2007 regulatory action followed a 2006 2d Circuit case that would have, if broadly followed, facilitated shareholder access to the company proxy.

Executive Compensation

Apart from disclosure issues surrounding compensation generally, the SEC should review whether financial services compensation models create incentives for excessive risk taking.

Credit Rating Agencies

Though a detailed and proscriptive set of rules was finalized in 2007 (as a result of the Credit Rating Agency Reform Act of 2007), there is a renewed appetite in Congress to do something more with regard to these entities due to the events of the past year.

**Auction Rate Securities**

Many investors remain without access to their funds invested in auction rate securities. While the Commission, FINRA and state regulators have reached settlement agreements with a variety of firms and have prioritized restoration of funds to customers in those settlements, there are still a large number of investors who cannot access funds invested in these now illiquid instruments. Ongoing cases will continue and Congressional interest is also likely to continue while constituents are without access to their funds.

Short selling

The SEC will be under pressure to analyze whether or not the remedial steps they have taken have been effective or whether they will need to consider reinstatement of a pricing test like the uptick rule.

Hedge Funds

Congress is certain to call for new transparency and oversight of hedge funds and the SEC will need to work closely with Congress to craft proposals in a new oversight regime.

Credit Default Swaps

The SEC, along with its fellow regulators will need to communicate clearly to Congress how oversight of clearinghouses will work, the roles of the respective regulators and what levels of transparency will be provided.