Published on *The National Law Review* https://natlawreview.com

SEC Roundtable Discusses Current Securities Law Topics at 33rd Annual Ray Garrett Jr. Corporate and Securities Law Institute

Article By:

Mark D. Wood

Mark J. Reyes

On May 2, Lona Nallengara and Shelley E. Parratt, the acting director and the deputy director, respectively, of the **Securities and Exchange Commission**'s Division of Corporation Finance, participated in a roundtable discussion of current securities law topics, including recent and pending SEC rulemaking, at the 33rd Annual Ray Garrett Jr. Corporate and Securities Law Institute. The following is a brief summary of some of the issues covered at the roundtable discussion.

Mr. Nallengara and Ms. Parratt (the Panelists) discussed Iran disclosures pursuant to Section 13(r) of the Securities Exchange Act of 1934 (Exchange Act) and, in particular, what the staff is doing with this new information from issuers. Section 13(r) of the Exchange Act requires issuers to disclose specified activities "knowingly" engaged in by an issuer or any of its "affiliates" involving Iran, the government of Iran or other specified persons. The Panelists remarked that, while they are receiving this disclosure and distributing relevant information to the Office of the President and others as required, the staff is still in the process of working on a plan for what to do with this additional information. The moderators further raised the question of how issuers should be addressing the application of this disclosure requirement to an issuer's "affiliates." Specifically, while the term "affiliate" is defined pursuant to Exchange Act Rule 12b-2 as a person that "controls or is controlled by, or is under common control with" the specified person (which definition is used for many purposes, including resale restrictions pursuant to Rule 144 under the Securities Act of 1933), the roundtable moderators noted that some issuers and practitioners appear to be applying different standards in determining "affiliate" status for purposes of Section 13(r) of the Exchange Act. The moderators noted that there is great debate regarding how an issuer is required to determine its affiliates for purposes of these requirements. The Panelists acknowledged this question and potential issues with differing interpretations of the term "affiliate," but were unable to provide further guidance on the matter.

The Panelists also addressed conflict minerals disclosure. In response to the moderators' questions on whether the public should expect the SEC to release formal guidance regarding these disclosure requirements (particularly in light of the pending legal challenges to the conflict minerals disclosure rule), Mr. Nallengara acknowledged the desire of the staff to release guidance on this topic. Mr.

Nallengara noted, however, that because of the pending legal challenges, the staff will need to be careful in preparing and releasing any such guidance. The Panelists did not indicate any specific timeline for releasing such guidance.

The Panelists also discussed the SEC's Report of Investigation pursuant to Section 21(a) of the Exchange Act regarding the investigation of Netflix, Inc. and its chief executive officer's disclosure of Netflix information through social media outlets and possible violations of Regulation FD, as reported in Corporate and Financial Weekly Digest of April 5, 2013. Mr. Nallengara briefly summarized the findings of the report and commented on the importance of clarifying the staff's views through the release of the report regarding the use of social media when disclosing material non-public information. Panelists emphasized that, if an issuer is planning to disclose material non-public information, the public needs to know how the issuer plans to disclose it and, if the social media channel is not one that the market is aware that the issuer uses to disseminate information, the issuer needs to tell shareholders about its plan to do so.

In closing, the Panelists discussed current and anticipated rulemaking, including rulemaking required under the Jumpstart Our Business Startups Act (such as the proposed elimination of the ban on "general solicitation" in private offerings made in reliance on Rule 506 of Regulation D or Rule 144A of the Securities Act of 1933). The Panelists remarked that the SEC has established independent teams to work through each anticipated or proposed rulemaking. However, while the Panelists discussed the various anticipated or currently proposed rulemaking projects, they did not provide any firm timetable for when any such rulemakings would be released.

National Law Review, Volume III, Number 130