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## The SEC's Spring 2018 Rulemaking Agenda – Observations on the Corporation Finance Agenda

The Spring 2018 unified regulatory agenda – the so-called “Reg Flex” agenda – came out on May 9. Although most of the items on the Corporation Finance agenda remain the same, there were a few new items added to the list that bear mention.

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Added to the “proposed rule stage” was a rulemaking on “Business, Financial and Management Disclosure Required by Regulation S-K,” which previously had been on the long-term actions agenda. Other than to say that the proposal would be to “modernize” the disclosure requirements, the agenda doesn’t provide any insight into the areas that might be covered. This topic is a continuation of the Division’s Disclosure Effectiveness initiative and suggests that change may be in the offing that goes beyond the modest proposals that were included in the proposed rulemaking to implement the FAST Act report.

Also at the proposed rule stage is a rulemaking on “Filing Fee Processing.” The description of this project suggests that the Division will propose a rule to make the fee-related information on various Commission filings structured data. Doing so should allow the Commission to better track filing fees, particularly when they are transferred in connection with unused fees in Securities Act registrations. It is unlikely that any substantive changes will come out of this project.

The third new item on the list is a topic that Director Bill Hinman hinted at in his recent appearance before a subcommittee of the House Financial Services Committee – “Extending the Testing the Waters Provisions to Non-Emerging Growth Companies.” Testing the waters, which allows emerging growth companies to have discussions about an offering with qualified institutional buyers and institutional accredited investors, has been an increasingly popular provision of the JOBS Act. It makes every bit of sense to extend this concept to all companies that might be interested in undertaking a registered securities offering. And given the sophisticated audience with whom these discussions may be had, there would be no adverse impact on investor protection.

Added to the “final rule stage” list is the proposal on “Disclosure of Hedging by Employees, Officers and Directors.” This rulemaking, which was initially proposed in February 2015 to implement Section 955 of the Dodd-Frank Act, had been on the long-term list last fall. It is interesting that the Chairman has chosen to add this rulemaking to the list. On the one hand, it is a relatively innocuous proposal that does not call for any burdensome level of disclosure. On the other hand, however, because the proxy advisory firms and institutional investors have taken an interest in hedging by insiders, many companies have already made voluntary disclosure of their hedging policies as a matter of good corporate governance. As a result, adoption of the rule is unlikely to have any meaningful impact, although it will allow the Commission to check this one off the Dodd-Frank mandate list.

The SEC’s Spring 2018 Reg Flex agenda can be viewed [here](#) (Current) and [here](#) (Long-Term Actions).