ASSOCIATION OF CORPORATE COUNCIL

Staying Smart on SEC Issues: Hot Issues for the Business Lawyer
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Faculty: Ely Razin, Chief Strategist, Westlaw Business; **Kenneth Gary**, Editor of SEC Currents, Westlaw Business

Moderator: Heather Travis Boone, General Counsel, Trinity Capital Corporation

Heather Boone: Thank you and welcome to this Web cast entitled, "Staying Smart on SEC Issues, Hot Issues for the Business Lawyer." I am Heather Boone, General Counsel for Trinity Capital Corporation and Los Alamos National Bank locate in Los Alamos, New Mexico; and I am joined today by Ely Razin, who is the Chief Strategist with Westlaw Business; and Ken Gary, Managing Editor of "SEC Currents," Westlaw Business publication. And let me see if I've got control of these slides.

Today, we're going to talk a little bit about some issues that are encountered by in-house counsel. By virtue of our positions we confront a very diverse range of issues, many of which can indirectly implicate disclosure requirements for those SEC reporting companies.

Awareness of market standards and regulatory focus can assist us in our role as counselors to companies, our clients, by knowing how our businesses are affected by these market conditions. We'll be able to better advise our clients.

And then finally, the issues we are addressing today we believe are of interest to a variety of business. They have broad applications and are not segmented to any specific geographic region or industry. And with that, I'm going to turn it over to Ely.

Ely Razin: Hi. Good afternoon and, I guess, good morning, everybody. Again, my name is Ely Razin, and I'm the Chief Strategist with Westlaw Business. And what I wanted to do was pick up from where Heather just left off and tell you a little bit more about what we're planning on talking about today with the recognition that our audience today is quite varied in terms of the industries in which everybody's involved, the size of the companies, their roles in the companies. And so we've set our goal for today to really cover a breadth of issues that we think will be of interest to the wide variety of people on the phone today with a focus on the absolutely most current information and current analysis that we can provide.

We also have a second goal, which is not to be academic about this. We're very much focused on what next. What are the next steps, the practical advise that we can provide to you all and that we can all discuss together today with some elements, of course, of the backdrop, the history, the academics of this, but very much focused on the practical advise.

And as we talk through things, you'll hear us reference a variety of companies, a variety of filings, SEC reports, et cetera. Everything has been summarized for you at the end of this presentation so that if you are interested in following up on any of these things at the end, you'll see a few slides at the back that actually list the materials as well as several white papers that we from Westlaw Business have made available on these topics.

So with that as backdrop, let me just synopsize what we'll be discussing today. First of all, adjusting to new SEC rules with a focus on two relatively hot topics, the first, executive compensation and a number of things under that umbrella, and what I would mention to you all is that as much as this has been with us now for al most a full year, there are still many new trends and many updating trends that are worth visiting today; and our second focus will be on certain issues to do with corporate governance, particularly shareholder assess to proxy materials, director nominations, et cetera. So those are a couple of very hot issues, and it happens that both of those are driven by the SEC.

Our second main category today is almost the polar opposite. It's dealing with fundamental market change. That's not at all driven by the SEC. In fact, the SEC is very much a follower on these issues, and of course, our focus on that will be on colloquially known as the "credit crunch," and we'll talk about a number of things to do with that.

Our third focus is on some more, I would say, narrow issues, but when you start to look into them, they're in fact not narrow at all. They play out in the accounting rules in the areas of internal controls and tax positions as well as the accounting standards that are followed. But when you actually walk through some of the materials as you will today, what you'll start to see is that many of these issues are far broader and may actually shape the way you disclose or even operate your business. So with that, I'm going to flip us forward into our next slide and invite Ken to start talking.

Heather Boone: And before Ken does, let me state that if you have questions during the Web cast, you can send those in, and I will try to get them answered. If they aren't answered during the Web cast, we will do it as a follow-up, and they'll get posted on the ACC Web site where this Web cast is located.

Kenneth Gary: Okay. Thanks, guys. Executive compensation. As everyone knows, the new rules have been in effect for almost a year now, and with them companies have been struggling to enhance those disclosure, particularly their compensation discussion and analysis sections on their 10-K, proxy statements and registration statements.

To date, issuers have been using the CDNA to clarify in detail four prevalent items, the first being compensation package calculations; second, scope, purpose, procedures for compensation committees and their members; third thing, roles and relationship with outside compensation consultants; and lastly but certainly not least would be corporate stock option grant practices.

The new CDNA requirements requires issuers to disclose direct ((inaudible)) compensation figures using a new tabular format, which includes detailed explanatory narrative footnotes. These are really important. This, is an area that the SEC is really focusing on and that recently they've come out saying that the disclosure to date have largely been inadequate.

They're looking for disclosure following principles of quality and usefulness, expanding the investor-friendly planning with requirements to the new CDNA sections. The new sections are intended to provide companies' board of directors with an opportunity to explain underlying factor and the objective dictating the companies' compensation policies and procedures. It also requires them to disclose executive compensation figures using new tabular formats as I've just discussed.

Now, while a lot of companies have used the CDNA to target stock option grant practice disclosures as really the hot button issue de jour, there remain plenty of other executive compensation areas that the SEC remains concerned about, particularly the narrative footnotes explaining the calculations and methodologies behind executive compensation structures. And that's something that I think you all should be certainly cognizant of in putting these things together.

A number of factors that they're looking at include relationships, like I said, with outside consultants, severance and change of control policies, stock option grant practices, pension plans, internal pay equity and prerequisites and tax gross ups.

Now, if we were to move to one of the biggest that the SEC is definitely looking at is deferred compensation, and that plays a huge role within your company just in planning and strategizing. And of course, deferred comp it was originally defined in ERISA back in the early '70s kind of delineating between qualified and non-qualified compensation plans. The non-qualified ones, of course, are not eligible for tax deferral benefits. Instead, they're taxed when recognized and have to be disclosed with the SEC. And that's something – that's an area that we've been looking at.

Those rules actually changed, and they took a significant turn towards more enhanced disclosure and transparency back in April.

Ely Razin: And, Ken, could you share a couple of example with us of these?

Kenneth Gary: Sure. Give me a second here. There's a number of companies that have come out just kind of enhancing those disclosure, giving more detail regarding, you know, the calculations of how and why certain companies are structuring executive compensation levels and those benefits in various ways. A lot of companies are backing away from practice of old because of these new disclosure mandates. So it's interesting to see how companies are reacting to both SEC and IRS regulations.

Under the new rules the companies have to add representations and warrantees and acquisition agreements, potentially amend their severance arrangement with target companies and employees, and consider subsidizing stock options as other attractive compensation vehicle. So it really does extend far across just what, you know, standard executive compensation as you might think of it. It also spans across potential M&A activity, so it's anther thing to really consider if you're thinking about becoming a target or acquiring someone else.

Ely Razin: Right, so this, is something on our end I know we've been following up quite a bit on, but it's interesting, because people typically think of the executive compensation rules as being disclosure issues, and in fact, when you start to see how this plays out in the big, it actually affects how companies go about their M&A activities, how they structure their compensation plans. It very much affects their actual operations.

Kenneth Gary: That's right. That's right. And it actually ties in nicely to another area the SEC has been hot on, which are tax gross ups, which is another – that also comes into play in merger and acquisitions. Of course, the tax gross ups are – they're embedded typically in change of control trigger clauses and are usually subject to a 20 percent excise tax on the recipient executives. So companies looking to – you know, in the past have tried to pay off taxes on those benefits to the executive as part of their prerequisite plans and are now – again, we're seeing filings coming in where companies are rather than disclose that and face negative publicity and shareholder aggression perhaps, they're looking for new ways, and they're restructuring those executive compensation packages to avoid those tax gross ups in many cases.

Yes, the gross ups are also a spotlight in the new tabular representations under the CDNA. That again puts the spotlight right on them. You have to disclose those, whereas in the past it wasn't really quite as in the spotlight.

Heather Boone: You know, and one thing I know I've been to seminars with directors – geared towards directors, and they did one survey prior to the implementation of the rules on how many directors actually knew the terms and conditions of all of the elements of their executive compensation, and the response was pretty low. And I think that that's something that has certainly been cured by the new exec comp rules is that they are well aware of what their executives are getting paid, and that may be part of why some compensation arrangements are changing as well.

Kenneth Gary: Most definitely. Most definitely.

In response to all of this, we're seeing new regulatory developments. The SEC came out, and I'm sure many of you know, they did a study and issued well over 300 letters to companies varying in size and industry – we're not talking about just the Fortune 500 companies here – but specifically asking them to enhance their compensation disclosure and analysis sections because they were lacking in a variety of ways.

Ely Razin: And, Ken, in your experience, is 300 a lot or a little?

Kenneth Gary: I would say it's quite a bit, and particularly in the case, the fact that it's going to not just the, you know, Cokes and Pepsis of the world, it's actually hitting the small public companies, which is kind of a new way to go about it for the SEC. So it's certainly a development.

And we've actually been able to – we've found and got a hold of one of those letters, and it's pretty clear that they're looking for much, much, much more information than they're seeing with regard to calculations for those executive compensation levels. They want a narrative. They want explanations. They don't want just lengthy disclosures. They're looking for quality, and it appears that if they're going to continue this venture. So it might be in everyone's best interest to disclose what they can in the best way that they can here.

Now, of course, penalties here remain uncertain. I haven't seen anything disclosing what might happen to a company if they've failed to report with the new regulations. Obviously, restatement's always a possibility, investigation, negative publicity, all which could affect your stock price. But to date, and I'll just give you one example, Berkshire Hathaway, clearly not a small company, their compensation discussion analysis section is a whopping two paragraphs long, and they have yet to amend their filing. And I've seen others similar to that, but that just struck me just because of the nature and size of that company.

Most recently, there was a – back in late August the SEC actually charged a general counsel, which is, you know, not unheard of, but it is certainly worth thinking about. The SEC charged a former general counsel of KLA-Tencor and Juniper Network for their participation in fraudulent stock option backdating. So this just kind of is another signal that the SEC is definitely hot on this. It's not going away. It's something for every inside counsel to be considerate of.

Ely Razin: So, Ken, having talked through what you've just done, I mean, I had mentioned in the introductory comments that a lot of people have thought of executive compensation as sort of being already digested, all the new rules. Is that your sense, or are we still in the early days on this?

Kenneth Gary: I get the sense that we're still in the early days on this. I believe everyone has read the rules. Unfortunately, a lot of the nuts and bolts of the rules kind of as always bring a lot of gray areas with them. And rather than come with disclosing everything, I think a lot of issuers are bearing to the cautious side and holding back with good reason. So it's a fine line. It's going to take a lot of give and take. I'm sure that more guidance will be coming out next year both from the SEC and likely FASB as well relating to certain accounting measures. So it's certainly something to keep your eyes posted for.

Ely Razin: And when you say keep everyone's eyes posted, I mean, I think we're talking both about how things get disclosed but also how the underlying transactions and relationships are structured. Is that right?

Kenneth Gary: Yes, I would agree with that. I agree with that.

And speaking out disclosure there, an interesting wrinkle has occurred, as I'm sure many of you have already experienced. This, is the first item corporate inside counsel securities lawyers have really been required to work with tightly the human resources department. I've been to several conferences on the executive compensation, and it's remarkable that, you know, I'd say a good 50 percent of the attendees are not in the corporate offices; they're in the human resources departments. So that's – if you haven't already, I think that's something that would be a good practice to form a committee involving your human resource department to help you with these disclosures.

Ely Razin: And, Ken, maybe worth a note just where we talk about the role of HR, one of the big issues that's still out there is internal pay equity. A lot of times executive compensation is structured in light on all the peer companies and how much they're paying their executives with less public, let's say, information about how those executive compensation levels compared to the existing internal constituencies. And I think it's pretty fair to say that that issue of internal pay equity is also a real focus for the SEC now, and we're going to start to see more about that.

Kenneth Gary: Oh, absolutely. I would totally agree with that. That's something that's kind of gone unnoticed a little bit, and I would definitely expect to see more on that in the coming year.

So why don't we move along to corporate governance, then?

Ely Razin: Okay, great. So there's a lot that one could say about corporate governance. Obviously, it's an issue that's both broad and incredibly important. We chose to focus today on a specific issue within that umbrella, which is shareholder proposals for director elections.

So just to, I guess, level set first what we mean by this, there has for several years been a push and pull under the SEC's watch about how shareholder materials can get included in – I'm sorry – how shareholder proposals can get included in a company's proxy materials. And for a while that seemed to be quite settled. The SEC actually had a rather limiting interpretation that fundamentally meant that shareholders couldn't get a whole lot into company proxy materials. But there was a rather important ruling that changed all of that.

Basically the court of appeals in that case expanded the access that shareholders would have to company proxy materials. And the upshot of all of that is that all of a sudden instead of shareholders coming in from left field and perhaps publishing their own external materials, they actually potentially could have access to a company's own proxy materials. And why that matters is probably obvious, but among the many issues that might impact is who controls director nominations. And the greater the access, the greater the shareholder control potentially.

So as we all start to think about the implications of that, we have to consider really two levels of that issue. One is literally the proxy materials themselves, but secondly, the governance advice that we provide to the executive suite, because people have to be aware that this, is an issue that's out there, and it's very much right in a hazy zone.

The SEC has actually produced two completely opposite proposals about how to deal with this. One, aptly enough is called "pro-access," meaning pro-shareholder access, and the other is called, "non-access." And they put both of them out there.

We've summarized one of them here, which is the first bullet you see under current status. The SEC proposal leave control in the hands of company-driven voting processes. But the other proposal actually does the opposite, and because this, issue is so contentious, it's actually invited a huge amount of feedback from the business community, over 20,000 comments. And not only is it contentious, or let's call it interesting, from the business community's perspective, it is at least as much so from the political perspective. It's a very hot political issue.

The absence of Democrats on the Commission itself means you don't hear quite as much about that on the Commission level as you would otherwise, but suffice it to say that it's incredibly hot, so much so that it doesn't look set to resolve itself this year in the way that it was hoped. Instead, Chairman Cox has basically publicly stated that we're going to aim for a short-term solution to get us through for the moment and continue to work through in the big over time.

So considering that in and of itself, that's a pretty contentious set of issues that's going to be out there for some time. You marry that together with another initiative out there, the E-proxy initiative, and there's still other issues that come to play. And the idea of the e-proxy initiative is that you can continue if you'd like to circulate your proxy materials in printed form as you have. Alternatively, you can opt to send a notice to people and let them go check the proxy electronically.

So what that does together with greater access is sort of left up to the imagination, but potentially there's some rather significant impacts to be had on governance in general. And as we all know, governance is a huge focus these days more than ever. You have folks like ISS coming in and raiding companies through the corporate governance quotient, and all of this stuff just really matters. And therefore, our advice for now, because it is very much hazy, is to review the current proposals, stay abreast of them, and make sure to keep in close coordination with the executive suite as well as with key shareholders as you think about how to actually work in this somewhat changing world.

Heather Boone: And, Ely, along with your notation that this, is a hot political issue, the Senate Banking Committee is actually hold hearings today on proxy access.

Male: Yes.

Heather Boone: So it might also behoove us to keep an eye on what the Congress is going to do.

Kenneth Gary: That's right. They've actually nominated two Democrats for the empty seats on the Commission, so I believe that's being considered today as well. And I would expect, you know that there's a good chance that the short-term solution will probably revert to the non-access rules or some form of it for the short term for the 2008 proxy season. So again, something to monitor. That's pretty much all I have.

Ely Razin: Now, Heather, we had talked I think just yesterday actually about, you know, how one might involve key shareholders in this process and, you know, what best practices we've become aware of. And just to mention to the group on the phone and on the Web cast, you know, it's very much contingent, of course, on what your business is and who your key shareholders are.

But I had actually attended an M&A conference a couple of weeks back where leading bankers and lawyer were talking about their relationships with their funds. And one activist fund was present, and the representative there basically said, look, you have to decide what level of discretion you need to adopt in general for your business, particularly in light of Reg FD, but once you've decided on that level of discretion, we would advise you to just invite us under your tent and, you know, being discrete, talk to us rather than don't talk to us.

So I thought that's just advice that's worth sharing, and again, every business is different, but to share one perspective on that.

Heather Boone: And it seems to be something that a lot of the large companies with some very public shareholder groups are starting to do, for example, to say on pay initiatives there have been a number of large companies who have sat down with those shareholder groups and have come up with a solution.

Ely Razin: Yes, absolutely.

Okay. So why don't we move on to talking about market condition issues. So we're again swinging the pendulum from things driven by the SEC to things in which the SEC is absolutely playing catch up. And again, let's just start with some level setting about what we mean by "credit crunch" here.

And there are somewhat differing definitions out there, so just to share ours, what this credit crunch really is, is tightened credit markets due to the factors originally like the subprime mortgage crisis, but not just subprime mortgage. In general, there's this activity, let's call it, out there broadly labeled "financial engineering." Financial engineering would encompass within, in it all sorts of slicing and dicing of underlying assets, underlying securities in order to resecuritize those into far more complex securities.

And the rocket scientists and other whiz kids behind this basically have done this in a way that on the one hand it provides optimal risk return balance. On the other hand what it really does is also mask some of the risk from the investment community unless the investment community does an awful lot of digging. And the upshot of all of this, is that not everybody is even aware of their exposure to the credit risk out there.

That credit market tightening has one further impact that we're going to talk about which is not only might it impact you in light of your investment securities, it might also impact you in light of your existing credit facilities. So whether or not you've chosen to invest in securities that might be risky, you may have some elements of debt or leverage used to fund your business, and what we're seeing out there in growing numbers of disclosures is that credit markets in that respect are also tightening.

So when you think about why this matters, it actually strongly impacts a wide variety of businesses. It might have started playing out in the mortgage area and then broadened to financial services, but it's actually broadening far beyond that. So when you see articles that talk about the ripple effects not being clear, this, is very much playing out in real time. These things really aren't clear, but what we can say is that it seems to be far broader than the original thinking of gee, this, is limited to mortgage, or this, is just limited to the financial service community.

So as lawyers advising and servicing our businesses, what we need to think about here are, of course, any disclosures that we need to make on this variety of issues. But importantly, we also need to think about our credit or debt negotiations and the terms that we're being asked to potentially renegotiate now.

As I mentioned, it's interesting. This one didn't start with the SEC obviously. There is no SEC regulation yet, but we certainly see the SEC beginning to play catch up. And on an enforcement level, the SEC has already stated that they are going to target with investigations any and all actors involved in the subprime crisis. So they're casting a somewhat wide net already, but of course, as this plays out even more broadly, you can't see the SEC stopping there, or one shouldn't assume the SEC would stop there. And so again, it's just something that we all need to be keeping an eye out.

Heather Boone: And another thing that we've seen growing out of the SEC's view of the market is that they have begun to do a review of insider trading plans under 10B-5, and you've seen, with Countrywide being the first publicly disclosed one, the SEC is starting to look at those as well.

Ely Razin: Absolutely. In fact, there was a huge article this weekend in the "New York Times" about just that. So yes, this, is something that we've all got to keep an eye on, because it's a very, very rapidly changing situation.

So what we've done is just pulled out several trends. And as we've mentioned, it's changing and the new trends are emerging, but it's worth looking at a couple of the ones that currently exist.

First of all and not surprisingly, financial service companies are the most immediately effected. You see this plying out in the news in real time. You also, of course, see it playing out in their filings. And the one that we found most striking is a company called accredited home lenders. A lot of times when companies are looking to disclose an issue, they will disclose it either narrowly, or they'll just come right out and say everything. But to position themselves in some degree of context, they'll tell you, well, we're not the only ones who are experiencing this problem; look at all these other companies that are.

So accredited home lenders in the Q filed in September basically came out and listed the litany of companies in the financial service space that are impacted by this and actually itemize the different impacts that each of those companies had experienced. And it's just a very sharply, telling outline of the ripple effects beginning to play out in financial services; however, as I mentioned, the ripple effects don't stop there. And what we've also seen is that companies in a wide variety of industries have disclosed enhanced risks relating to their credit facilities. And so people are finding it in general perhaps more difficult to renegotiate their credit arrangements, or technical covenant trips that at one point would have been essentially something that their lenders would forebear are no longer being dealt with in that sort of more gentle way by the bank. The banks are actually clamping down much more.

And so there is much greater risk out there as to credit arrangements, and therefore when you're considering whatever sort of renegotiation or refinancing you all may be undertaking these days, there are signs out there that refinancing and renegotiating is tough, and if you look at the list of companies that we've provided and note at the bottom, what we've done is really just shown you the variety of industries that are effected. You've got in there healthcare, entertainment, furniture, BJ Services, which is a retailing company. You've just got a large variety of companies represented, and these companies aren't the ones that are in any sort of formal bankruptcy proceeding.

There is a company that actually entered bankruptcy before the whole credit crunch clamp down, which is Bally Total Fitness. And in Bally's case they had already gone into bankruptcy, attempted to come out, experienced problems coming out, and now that they're experiencing those problems, they're finding their renegotiating even more difficult.

And so just some sings out there that credit markets have truly tightened. What that means for all of us is, again, we need to review the disclosure trends, be aware of how people are dealing with these issues in their disclosures, but very importantly, not limit the examination to those disclosure. We also need to be aware of what the underlying credit agreements and the terms and conditions that folks are getting and giving actually look like, because it is a changing world out there, and – excuse me – when you consider that, you also want to consider that this, is something that as general counsel we need to advise on. We also need to work in great coordination with the CFO's office, because of course they're deeply involved in financial planning and negotiating as well in all those areas, and it is a changed world.

Kenneth Gary: And if I could add, Ely, the one that is interesting out of all of this subprime trickle down is that it's really – it's also bringing out the issues with executive compensation again. We're seeing executives leaving, and we're going to get a lot of exposure to those severance and compensation packages. So it's going to be interesting to see how the SEC plays off of that possibly in their guidance for future enhancements to their executive compensation rules.

And just last week we also saw the SEC came out with a staff release regarding written loan commitments, so I think that plays right into this, particularly with the trickle down effects and deals that your companies might be getting themselves into. So it's something to look after.

We'll move along to accounting changes. There have been a number of accounting changes that inside counsel should really pay heed to. One of the more important ones is FASB's FIN 48, and what it is, it really – it requires issuers to consider the relative reliability of their tax positions held now or to be held in the future.

Under FIN 48's provisions, the tax positions must be assessed on a more likely than not standard of being sustained in the face of regulatory scrutiny or possible litigation. So if a particular tax position held by a company doesn't meet this estimated 50 percent threshold, its benefits can't be recognized within the issuer's financial statements.

So it's challenging. It's a gray area, and we're disclosures here very widely and a lot of reluctance on behalf of companies to disclose what the SEC's really getting at, and with good reason, again. I mean, these issuers are looking for guidance here. The tests that the FASB establish for determining has been amended already, and issuers are, you know, looking for guidance from the SEC, so they're still waiting on that. So that is something to monitor when assessing your tax positions.

For right now, their position for settlement requirements, there's three things that you should be considerate of. One is that if a taxing authority has completed its examination, including all administrative reviews and appeals, ad you settle with that. The second would be that the enterprise doesn't intend to appeal or litigate any portion of the tax position. Or three, that the enterprise thinks it's highly unlikely that the tax authority would subsequently examine or reexamine any aspect of your tax positions. So while the FASB proposed guidance is currently in the balloting process, it appears likely the changes will be instituted largely as proposed.

Ely Razin: So, Ken, what you're actually saying is that, let's say, is the IRS is reviewing whatever it is that your business up to, you then have to go about disclosing. Is there sort of an inverse dynamic as well where disclosures might be the IRS to further examine what you're up to?

Kenneth Gary: Exactly. And that it the concern ((inaudible)) think about. There's been a lot of criticism here that, you know – and I should back step. The FIN 48 came as a direct result of the tax shelters back in 2004 when that was exploding. There's been a lot of criticism that these FIN 48 disclosure and securities filings would potentially lead the IRS down a very clear road to what it is people – what it is companies are either trying to protect or hedge against.

So it's a tricky road for sure. And, you know, guidance should be coming I would expect in 2008 as to clarify or at least attempt to clarify a lot of these standards. So be on the lookout for that.

Ely Razin: And, Ken, when we talk here about disclosures, I mean, a lot of our discussion around disclosures to date have been the written disclosures with the filings, but should we talk a moment as well about the analysts calls and some of the advise potential that we can provide there?

Kenneth Gary: Sure. You know, there are definitely different kinds of disclosures here. So one we've been talking about, the SEC disclosure, in discussing items with analysts that could directly impact your stock prices, that's, again, another area to be very mindful of. And these tax positions in particular, they could drastically affect a rating. There's no doubt about that. So it's something to be very careful of. So those are effective now.

And if we move to our last and final accounting change hot topic, the transition from U.S. GAAP to International standards, that, again, is – that's in the works, and I'm sure everyone's been reading about it. And if you haven't, that would be something to catch up on.

The SEC has proposed switching or enhancing their current requirement of companies comporting with U.S. GAAP standards to transition over to the International standards. Now, this would really open up a lot of avenues for conducing transactions overseas as most of the world already accounts for things on the IFRS standard.

The recent commission roundtables and deliberations within, international regulators have led to a concerted movement aimed at eradicating these complicated disparities, so I would expect that this happens very soon, at least some form of it. It could happen before the end of the year. Right now, there's discussions between the SEC and IAFC and even some of the Japanese regulators to find the perfect solution here.

So I know there's been a lot of (fotter) from accounting companies pushing for this as the streamlined international accounting stream would make it quite easy or at least easier to keep things on the books. And again, it might – it should cut down compliance costs and make it a little easier for domestic issuers working overseas.

Ely Razin: And, Ken, what sorts of companies would this impact, companies that deal a lot internationally or even companies that are primarily domestic in their focus?

Kenneth Gary: It's going to affect everybody. It would be – one proposal calls for potentially getting rid of GAAP, so we're looking at a complete, entire overhaul to the accounting system. And it really does look like it's going to happen.

FASB's behind it. The SEC's behind it. Right now I think they're trying to figure out a way of, like, who is going to be regulating it in the end, so I would look for an international body of some sort.

Ely Razin: And obviously, this, is quite, you know, quantitative in its focus, so is there sort of a GC lawyer role in this, or is this primarily something the CFO needs to worry about?

Kenneth Gary: There's definitely a role. It's more something to be aware of. Obviously, in crafting the narrative portions to these disclosures and considering your disclosure as a whole from a bird's-eye view, I think that's something that general counsel should be cognizant of and just ready for as well as possibly there might be some internal organizational changes to your operations that you might want to consider, but that would be a company-specific issue.

So that is pretty much it on the accounting – big, hot topic accounting measures.

Ely Razin: Great. So we absolutely wanted to leave time for questions and thoughts from the assembled group on the phone and on the Web cast.

And I think, Heather, you've been keeping an eye on those?

Heather Boone: Yes, we haven't gotten any yet, so if you have any questions, please go ahead and submit them.

Ely Razin: Or we've just been incredibly thorough.

Kenneth Gary: It's definitely an exiting time now for disclosures and those of us monitoring them. It's also exciting for people under the gun trying to comport with all of these new rules. I mean, so many regulations out there and more coming, it's just-it's a dozy.

Ely Razin: Well, perhaps what we do now is just mention sort of parting comments. As folks might now, Ken and I both work in the Westlaw Business unit that's a part of Thompson West that focuses on transactions and transactional law. And everything that we've discussed today is available on that site, both disclosures, the underlying documents, SEC releases and speeches and current trend analysis. And if you're interested in going deep on several of the issues, we've produced some white papers on executive compensations, FIN 48 and proxy access, that you can easily get by calling the gentleman, Mark Butler, whose name and number are below.

Heather Boone: And there is a question from one of our listeners, which is to review the SEC's proposals regarding corporate governance.

Ely Razin: Sure. I mean, I can certainly start, and, Ken, please jump in with color commentary. But what the SEC has done, as I mentioned earlier, is provided two almost diametrically opposed proposals – one being the proxy access and the other being non-access.

So the access proposal, to start with that one, would essentially allow shareholders to submit shareholder proposals to the company that would actually need to be published as part of the company's proxy materials. And to the extent that those proposals relate to director nominations, the shareholders can actually nominate ((inaudible)) directors different that what management thought to nominate and get those included in the company's proxy.

So that's very much a seat change in a couple of respects. One is obviously it throws governance a little bit into a complicated loop. It also potentially plays itself out in a way that's quite good from a corporate governance perspective, because it does reestablish shareholder control of management. But it's definitely new and different, and that's one proposal.

The other, the alternative proposal, is essentially to return to what existed prior to that court case I had mentioned earlier, which was fundamentally non-access where shareholders really couldn't submit materials for inclusion in the company's proxy. They'd have to rely on the long-existing alternatives that were out there. And what that would fundamentally do is reassert the division of shareholders from management and leave management solely in control of the company's proxy materials and voting.

Ken, anything you want to throw in, in addition to that?

Kenneth Gary: You know, just the fact that it's so – it's been such a hot debate back and forth and such a political issue. It's always interesting to follow. It's unfortunate to see that – and not exactly surprising – but the timing of it all with no Democrats left to vote on this. It's an interesting time. I think it will be interesting to see – also interesting to see how the nominees get – if they pass through Congress and get put into their seats if they're tasked to a quick vote on this and what kind of results we'll see there.

The short-term solution is really going to be going back to the status quo from almost the pre – before the court case, so it's essentially a non-access rule. So I would prepare for that but definitely keep monitoring.

Ely Razin: And, Ken, it's probably worth also talking for a moment about just the change in beneficial ownership threshold if the pro-access proposal actually carries.

Kenneth Gary: Okay.

Ely Razin: Basically, there is talk of potentially raising that threshold slightly, so while access might be granted, it would be granted in the limited set of circumstances, and that's just something to be aware of as well.

Heather Boone: Since there seem to be no other questions coming in, if you want to contact any of us later, I'm sure that we will be willing to answer any questions you have. And they will also be downloaded and sent in to ACC, and we'll make sure that all of the questions get answered and posted.

And with that, I'm going to – oh, and I am asked to remind you all to complete the evaluation form in the links box. If you will give us your feedback on how this Web cast did, your likes and dislikes, then we can use those to improve in the future.

And with that, I am going to give one last plug. Thank you to West for helping us and providing our experts today. And this Web cast was put on by the new to in-house counsel group. And then I am also the Chair for the Corporate and Securities Law Committee. So we certainly welcome you to participate in both of our committees and look forward to hearing you on future Web casts.

Ely Razin: Thank you all for joining.

Kenneth Gary: Thank you.

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