Release Numbers 33-8655; 34-53185; IC-27218

Mr. Chairman and Honorable Commissioners:
You have solicited comments on the proposed rule “Executive Compensation and Related Party Disclosure.” Your stated objective for the rule (amendments) is to “provide investors with a clearer and more complete picture of the compensation earned by a company’s principal executive officer, principal financial officer and highest paid executive officers and members of its board of directors.” The SEC is commended for providing this atypical window of opportunity to comment on the comments. Hindsight is so convenient, even if this is a regulatory Katrina.

The pattern of commentaries received on this matter serves as a wakeup call for the future. The situation you provoked by willful inaction and now squashing your lap, provides a fine example of the intra-institutional hindsight v foresight conundrum faced by all institutions in times of change. Since you will not emerge from this turbulent scenario unruffled, no matter what you do, why not profit from the experience? Your choice.

Will it be safe, as usual, to discard the commentaries that don’t fit your cognitive window? Do you sense more risk in riding with business as usual on status quo into your future? Will knee-jerk response carry the day for the SEC, as usual? Will the next decade be a carbon copy of the last one? Your bet.

There is, of course, zero uncertainty as to what the SEC will do to handle this grossly underestimated situation short term. The SEC will pass a tough-appearing rule to appease the stakeholders and then impede enforcement to satisfy the alliance. While this strategy has always worked in the past, as the record attests, will it hold for the future? Your bet.

The issue at hand here serves notice that letting significant discrepancies go on unaddressed for years can accumulate explosive material that may overwhelm your crisis response capabilities when the accumulation finally ignites. If you don’t neutralize the forces of discrepancy when they are small, time will not be on your side. Will the problem go away by itself? It’s your bet.

Is there a precedent for this commentary landslide and why did the majority come in so late in the time window? The commentary flood you received from lawyers terrified of a SOX upgrade to their responsibilities, a few years back, was constant and orderly. If the head shed had any intention of reducing its take, more responses would have been provided personally by CEOs making their claim for treasure based on their contributions. Forcing their General Counsels to comment with legal confusions, instead, was not a good sign of intent to comply. As far as shaping stakeholder opinion went, invoking legal conflict as a defense of business as usual was counterproductive – raising many more public concerns about the alliance than it resolved. Will all the other institutions engaged in narcotizing the stakeholders continue to do their parts? Your bet.

What is the likelihood institutional hierarchies reverse the current trend and reduce their unearned take of the treasury? As it is playing out currently, it is not the stuff of SEC stability. If you can’t control the financial carnage being manufactured by the alliance, and you already know your limits to controlling stakeholder reaction, what hope is there in more business as usual? How much peace will the stakeholders give you as they learn increasingly over time that nothing got changed? Will you, once again, get the usual 10 years of cushion? Will your emergency response capabilities be able to limit your damage after the levee fails? What are the odds the stakeholders will remain docile, complaisant bystanders, accepting any and all damage inflicted on them by business as usual? It’s your bet.

Running a factory for collecting fines for violating the rules (hindsight) is not the same thing as safeguarding the stakeholders (foresight) from damage. Just suppose the stakeholders wise up to regulation via tort, bypassing the SEC altogether. Can you really control all the feedstock to the stakeholders? When was the last test you ran on this?

The habits of thinking inherited from the past are not always suitable for the future. If preserving the SEC through the foreseeable future is the institutional goal, what possible futures could develop from here forward that would defeat that mission? Are there credible futures where the SEC loses control?

You are facing, exactly, the challenge of deciding design (foresight) or replication (hindsight). If you choose replication, things will run forward on no-brainer automatic. If you choose right going with hindsight, tradition is preserved at the least effort. But are you likely to get the future you want by following the precedents and rules? Have you even defined the future you want? If you don't perform the procedures of engineering foresight and instead go with business as usual, your fate will be determined by blind drift.

The first thing to be learned about the process of engineering foresight, as applied to problems like this, is that the endless questions and uncertainties have to be formulated, structured and answered up front. If you don't carve a scope and specification as an overture to the method of pragmatic foresight, you are left with raw hindsight and emergency response. There is neither an alternative nor a middle ground. The two domains are quite incompatible. Note well the cognitive difference between riding business as usual and intelligently arranging for a future you prefer.

Thanks again for running the experiment and providing all the excitement.

William L. Livingston, PE