

What Are the Regulators Thinking?

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Recently the [New England Chapter of the National Association of Corporate Directors](#) presented a distinguished panel of current and former securities regulators discussing enforcement and governance issues facing boards of directors today. Massachusetts Secretary of State William Francis Galvin; Paul Levenson, director of the SEC's Boston Regional Office; and George Canellos, former co-director of the SEC's Division of Enforcement and former director of the SEC's New York Regional Office spoke with moderator Thomas Dougherty of Skadden, Arps, Slate, Meagher & Flom LLP. Here are some highlights from the discussion.

Enforcement priorities and concerns. The regulators are concerned about: the constant pressure on public issuers to hit earnings targets and its impact on corporate accounting and disclosure; the financial services industry's management practices and its disclosures and advertising to investors, especially individuals; corporate internal controls, disclosure controls, and risk management; fraudulent investment schemes targeting affinity groups; and insider trading.

FCPA. To avoid problems under the Foreign Corrupt Practices Act, overseas operations should prioritize separation between business development functions and incentives on the one hand, and legal compliance functions and incentives on the other hand.

Insider trading. The panelists noted the increased use of expert networks in the investment community and they were skeptical about whether investors' warnings to experts, that they did not want to hear material non-public information, actually prevented disclosure of inside information.

Reg. FD. Companies need to be careful about matching what they are saying to individuals or small groups of investors with their broader communications with the investing public, including social media. When there is a violation of Reg. FD, companies should be proactive about dealing with the issue instead of waiting for an outside source to raise it.

Cybersecurity. The SEC is focusing on corporate governance concerning cybersecurity issues, companies' recognition and control of cybersecurity risk factors, and their disclosures when there is a breach.

SEC administrative proceedings. The Dodd-Frank Act gave the SEC increased power to bring administrative proceedings for securities violations, and given the costs of bringing cases to trial in the federal district courts, the SEC will likely continue to bring more cases before the agency's administrative law judges.

Corporate governance. When sitting at the top of very large, complex corporations, consisting of disparate entities with different histories, cultures, and strategies, directors should ask themselves whether they are confident that the standards that they personally adhere to are being followed throughout the organization.

More details about the program and panelists' remarks can be found [here on the NACD New England website](#).

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