

Symposium Securities Regulation and Corporate Responsibility

Panel IV: Emerging Issues In Corporate Finance

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Abstract by Caroline Katz

Speakers included Michael McAlevey, the Chief Corporate and Securities Counsel of General Electric Company; Martin Dunn, the Deputy Director of the Division of Corporation Finance at the SEC; and David B.H. Martin, a partner at Covington and Burling.

Mr. Dunn discussed the difficulty in achieving perfect regulation, mostly because of the large number of public companies. The SEC and other agencies must react to events, as they did in the case of Sarbanes-Oxley. The SEC has adopted several provisions including a shortened Section 16(a) reporting deadline, a shortened period for 10-Ks and 10-Qs to get filed, required disclosure regarding financial experts on audit committees, and required disclosure regarding codes of conduct and waivers of those codes. Mr. Dunn also discussed the shift from a completely federalized system where “the Feds do disclosure, [and] the states do corporate governance,” to a system where the Feds are having more of an impact on governance through requirements they create. The SEC reviews filings and disclosure and make sure that companies are in compliance with procedures.

Mr. Martin discussed how Sarbanes-Oxley puts an emphasis on 1934 Act reporting (which mandated corporate disclosure, including annual reports, quarterly reports, current reports, proxy statements, tender offer filings, and private filings). He spoke about two key provisions under Sarbanes-Oxley. Section 408 “provides that the Commission shall review disclosures, including reports on Form 10K and financial statements made by an issuer reporting under the 1934 Act on a regular and systematic basis for the protection of investors.” Section 409 provides that “each issuer reporting under the Act shall disclose, on a rapid and current basis, such additional information concerning material changes in the financial conditions or operations of the issuer.” These sections are important because they give the SEC considerable power and the discretion to use it how it sees fit. Mr. Martin ended his discussion with an overview of some of the new issues that the SEC will face.

Mr. McAlevey spoke about how all of the recent issues in the markets and in the area of corporate governance and the regulation of public companies affect GE. He discussed two elements of the process of dealing with information, the Company and the Board level processes. He explained GE was concerned with satisfying the new SEC rules and met the challenge with high levels of commitment and performance and implementation of various changes. Not only has GE complied with new regulations, it has gone beyond what it was supposed to do and set higher standards for itself. Of course, GE is such a large company with so many resources, that it likely had an easier time updating the system it had in place than perhaps a small company would have in complying with the new Sarbanes-Oxley requirements.