ICGN
International Corporate Governance Network

Opening Keynote Address: Mary Jo White, Chairman, US Securities and Exchange Commission

ICGN is a vital global forum for investors to share insights and ideas, but also important because of its steadfast focus on the wellbeing of the broader markets, the world economy and indeed, our planet. Although I'd rather be with you in person today, it is a pleasure and privilege to be here by way of videoconference from Washington DC, where I need to be to monitor the impact of recent international events for all of you.

Investors and regulators everywhere share a common interest in effective disclosures, robust corporate governance practices and strong corporate cultures, which are fundamental for fair and efficient markets and to achieve sustainable value. But as the preamble to ICGN's Global Governance Principles acknowledges, there are differences from jurisdiction to jurisdiction as to what precisely we are trying to achieve and the tools available to us.

I thought I would begin by discussing the regulatory framework in the United States, with respect to corporate governance matters and how the SEC, long known as the disclosure agency, fits into the framework. Then reflecting on the extent of the SEC's disclosure authority, I will discuss my perspective on the work we are doing on three important subjects on your agenda: board diversity, non-GAAP financial measures and sustainability reporting.

Dictating corporate governance practices in the United States is generally outside the scope of the SEC's regulatory authority and there is no national uniform code of governance for public companies, as there is in many other countries. Rather in the United States corporate governance is, with some exceptions, the domain of each of our 50 States under their Corporate Law, which tends to accord shareholders relatively limited rights over corporate management and governance.

The SEC has an impact on corporate governance through its disclosure powers, requiring public companies to provide investors with the information they need to make informed investment and voting decisions. The SEC thus, does not decide who may sit on a corporate board, but our rules do require disclosure about those who serve or are nominated to serve as Directors, and importantly, why they were selected to serve.

In some cases legislation is passed that specifically provides both substantive requirements and disclosure requirements intended to bring about change. For example, under the Sarbanes-Oxley Act Directors who are members of an Audit Committee of public companies listed on national exchanges, must be independent. And if at least one member is not a financial expert, companies must disclose that fact and say why.

In a similar vein, although the SEC cannot set the form or amount of pay of Corporate Executives, our rules have long required detailed disclosure about executive compensation. The Dodd-Frank Act enacted in 2010 also empowered the SEC and other financial regulators to establish permissible parameters for incentive compensation at certain financial institutions, to avoid incentivising the kind of excessive risk taking associated with the financial crisis. A joint agency rule proposal to do that is out now for public comment.

Now, given the nature of the largely State Law based governance framework for US companies, it has been a continuing challenge for investors, institutional as well as retail, to play as significant a role in corporate governance as the more empowered shareholders in many European companies. Indeed, in past years some have analogised the role of investors in US companies to what some parents say to their children, "You ought to be seen but not heard." While this characterisation was always an exaggeration, it does underscore the challenge. But the picture has changed for the better and active and engaged shareholders and efforts of the ICGN are part of the movement that continues to lead the charge.

Direct engagement with shareholders of US companies, particularly with institutional shareholders, has increased significantly in recent years, a development that I have strongly encouraged. This engagement has been buttressed with rights shareholders have under SEC rules, specifically Rule 14a-8, to have their own proposals included in a company's proxy statement, to be voted on by all shareholders. These proposals can cover a wide range of issues, including environment, social and corporate governance ones. And this is an avenue that shareholders increasingly use to get traction and initiate meaningful dialogue with boards and executives for changes on issues of importance to them.

There are significant success stories resulting from these efforts and the private ordering by companies responding to shareholder views. Prominent examples include the near disappearance of staggered boards, majority vote standards becoming the norm across the S&P 1500 and the recent successes of proxy access proposals, resulting in 35% of the S&P 500 adopting proxy access, compared to 1% two years ago. From time to time the US Congress also acts to directly provide shareholders' rights not accorded to them by State Law. Say on Pay for example, was a mandate in the Dodd-Frank Act, which enabled shareholders to cast a non-binding vote on a company's executive compensation.

As you can tell even from this brief description, corporate governance in the United States is a patchwork, driven by State Law, supplemented by Federal Law, including SEC regulations, private ordering prompted by shareholder advocacy and sheer doggedness by all of you. While this regulatory patchwork can be frustrating, we all have some powerful tools at our disposal. Regulators have disclosure and enforcement powers that can be used on a range of issues. Investors can directly engage with boards and senior management, use shareholder proposals, vote out Directors and if all else fails, vote with your feet. Different investors, of course, may have different objectives and interests. Investors with relatively short-term investment objectives, for example, often will have very different perspectives than long-term investors on a variety of matters, including those related to corporate governance, buybacks and sustainability practices, to name just a few. So, we can seldom say that a particular practice or disclosure is what investors as a whole want. It is not that simple.

You may ask then what is the appropriate role for the SEC in this space? Once again, there's not a simple answer. As you consider that question we must recognise the limits of the SEC's authority, including as it relates to the environmental, social and governance matters that are of increasing importance to a growing number of investors and other constituents. If we're not sufficiently mindful of the scope of our authority and other legal requirements, the courts will remind us, as they have before. The range of issues on which investors and companies can effectively engage on together, however, is not so circumscribed, but investors find that common ground between their concerns and the business objectives of a company, they can achieve traction with boards and senior management and your potential universe of impact and influence is nearly limitless.

That is why I would urge you to not only seek disclosures on the issues you care deeply about, but to also focus on the underlying corporate action where you want to see initiatives and changes by companies, consistent with your priorities, whether it be on climate change, cyber security risks, political spending or a whole host of other subjects. While specific disclosures can certainly provide more transparency and further certain goals, practices that are designed solely to satisfy disclosure requirements may not meaningfully address the underlying issues that are at the root of your priority. As GRI's 2025 analysis put it, in commenting on improving sustainability disclosure, quote: "Despite the increasing transparency, change towards a sustainable economy is progressing slowly." And that's the end of the quote.

This challenge does not at all minimise the critical importance of robust disclosure. Transparency is indeed the premise upon which the US Capital Markets have been built and it is the source of their strength. Investors and potential investors must be given the information they need to make informed investment and voting decisions. And it is also our responsibility at the SEC, using the materiality lens, to ensure that our disclosure regime evolves to continue to provide the total mix of information necessary for the reasonable investor whose priorities and investing behaviour also continue to evolve.

To that end, in connection with the staff's ongoing disclosure effectiveness review, the SEC recently issued a broad based concept release seeking input from investors, issuers and other affected market participants on our business and financial disclosure requirements. Our overall challenge is to refocus the lens of disclosure to better serve today's investors. The challenge for investors is even greater, to use your voices not only to inform us about the disclosures you need to make informed decisions, but also to influence corporate behaviour to better protect and generate sustainable corporate value.

Having now set the table at a 30,000ft level, let me turn specifically to three of your agenda items and discuss our efforts and my perspective on each of them: again, diversity on boards, non-GAAP financial measures and sustainability reporting. Now, I've chosen these three areas to highlight because of their importance, my own focus on them and because they – each one also serve to illustrate the challenges that investors and the SEC face in our respective roles.

Diversity on boards and in organisations more generally is very important to me and I have not shied away from expressing my strong views on the topic. As a former member of a public company board and its Audit Committee, I have seen first-hand what the research is telling us. Boards with diverse members function better and are correlated with better company performance. This is precisely why investors have, and should have, an interest in diversity disclosure about board members and nominees. As you know, major efforts are underway in the United States and elsewhere to improve board diversity. Many qualified candidates are out there and there are extensive resources available to Nominating Committees that can provide a rich supply of highly qualified and diverse candidates.

A few statistics underscores the importance of these efforts. Minority Directors on boards of the top 200 companies on the S&P 500 have stagnated at 15% for the last several years and the percentage of these companies with at least one Minority Director actually declined from 90% in 2005 to 86% in 2015. In 2009 women held only 15.2% of board seats at Fortune 500 companies and that number has only risen to 19.9% in the past 6 years. 73% of new Directorships in 2015 at S&P 500 companies went to men.

At this rate the GAO has estimated that it could take more than 40 years for women's representation on boards to be on par with men's. The low level of board diversity in the United States is unacceptable. I continue to urge the CEOs and boards of public companies act aggressively to alter this landscape and to do so quickly. Not only is it the right thing to do, it makes good business sense. I was pleased to see that the Business Roundtable, whose CEO members lead companies with $7 trillion in annual revenues and over 16 million employees, announced in April that it was, "putting diversity front and centre in their search for Board Directors," their words. And I will be looking to see the results of their announcement. You can do your part by continuing to exercise your voices loudly to keep the issue of board diversity truly front and centre and demand concrete actions and meaningful progress now.

The role of the SEC on board diversity, as on many other important corporate governance issues, is focused on disclosure. The SEC does not have the authority to mandate board diversity, but in 2009 the Commission adopted a rule requiring companies to disclose whether, and if so, how their Nominating Committees consider diversity and if they have a policy on diversity, how its effectiveness is assessed. The world does not define diversity and the adopting release made clear that there was no single layer required to define the term. It left it to companies to say what they mean by diversity in their policies and disclosures.

So, what has been the impact of our rule? Companies' disclosures on board diversity, in reporting under our current requirements, have generally been vague and have changed little since the rule was adopted. Very few companies have disclosed a formal diversity policy and as a result there's very little disclosure on how companies are assessing the effectiveness of their policies. Companies' definitions of diversity differ greatly, bringing in life and work experience, living abroad, relevant expertise and sometimes race, gender, ethnicity and sexual orientation. But these more specific disclosures are rare and not surprisingly, there are investors who are not satisfied. Some companies however have done a good job of providing more useful information to investors on board diversity. A growing number of company proxy statements have recently begun to voluntarily provide an analysis of data accompanied by pie charts and bar graphs to describe the state of the board's gender, race and ethnic diversity composition, sometimes in addition to other categories. Then that is one of the positive results of private ordering. This more specific information is clearly more useful to investors and based on the voluntary disclosures we have seen, it appears that it would not be difficult for companies to prepare disclosures that would include the more specific categories of diversity investors are seeking.

To respond to these issues I announced in January that I had directed the SEC staff to review our role and the extent and quality of disclosures that have followed, with an eye toward revising the role if there was a need. And I can report today that the staff is preparing a recommendation to the Commission to propose amending the rule to require companies to include in their proxy statements more meaningful board diversity disclosures on their board members and nominees where that information is voluntarily self-reported by Directors. Some may oppose even minimally more prescriptive diversity disclosure requirements. My view is that the SEC has a responsibility to ensure that our disclosure rules are serving their intended purpose of meaningfully informing investors. This rule does not and it should be changed. Our lens of board diversity disclosure needs to be refocused in order to better serve and inform investors.

Let me now turn to another of your agenda items, non-GAAP financial measures, which implicit the centrepiece of our disclosure regime, the disclosure of financial information. This is familiar territory for us all. Our rules require companies to file financial statements prepared in accordance with US GAAP, or in the case of foreign private issuers, IFRS. This essential disclosure requirement makes great sense. Accounting standards developed through a robust process conducted by an independent accounting standards setter, FASB in the United States that provide comparability among companies on the financial information that is most critical to investors. While periodically reporting financial results, according to US GAAP, is the lodestar/guiding star of our disclosure regime, we also allow, indeed require, companies to tell their own stories in their MD&A.

We ask companies to explain and analyse their results of operations through the eyes of management. As you know, MD&A, earnings releases and investor presentations produced by companies often include non-GAAP financial measures to convey, in management's assessment, a clearer picture of how they see the company's results of operations in a way that GAAP results alone may not convey. Not surprisingly, our rules governing these communications make clear that the presentation of non-GAAP measures cannot be misleading and require that they be reconciled to the appropriate GAAP measure so that investors and analysts can compare them to the one that is consistently defined under the GAAP requirements.

I generally think it is a good idea to provide companies with this flexibility and we do hear that investors want non-GAAP information. But recently I've had significant concerns about companies taking this flexibility too far and beyond what is intended and allowed by our rules. In too many cases the non-GAAP information, which is meant to supplement the GAAP information, has become the key message to investors, crowding out and effectively supplanting, the GAAP presentation. Jim Schnurr our Chief Accountant, Mark Kronforst our Chief Accountant in the Division of Corporation Finance and I, along with other members of the staff, have spoken out frequently about our concerns, to raise the awareness of boards, management and investors. And last month the staff issued guidance addressing a number of troublesome practices which can make non-GAAP disclosures misleading for lack of equal or greater prominence for GAAP measures, exclusion of normal recurring cash operating expenses, individually tailored non-GAAP revenues, lack of consistency, cherry picking and the use of cash per share data.

I strongly urge companies to carefully consider this guidance and revisit their approach to non-GAAP disclosures. I also urge again, as I did last December, that appropriate controls be considered and that Audit Committees carefully oversee their company's use of non-GAAP measures and disclosures. We are watching this space very closely and are poised to act through the filing review process, enforcement and further rulemaking, if necessary, to achieve the optimal disclosures for investors and the markets.

The third and final item on your agenda that I will cover today is sustainability reporting, obviously a topic of great importance, interest and complexity. I'll start with the baseline. Our rules and guidance are clear, that to the extent issues about sustainability are material to a company's financial condition or results of operations. They must be disclosed. But deciding whether such disclosures are triggered in a particular context is often easier said than done when trying to calibrate materiality to phenomena that have a longer-term horizon than most other financial metrics doing. And measuring whether and how a company will sustain its performance in a changing global physical and legal environment, which is itself uncertain, is not an easy undertaking. To begin with, sustainability encompasses a very broad range of topics that may relate to a company's risk profile, trends or uncertainties that could affect financial performance. These can include climate change, resource scarcity, corporate social responsibility and good corporate citizenship. The importance of such issues can also vary significantly by industry and company.

Despite the complexities, a considerable amount of very good work is being done and disclosures on certain sustainability issues are increasingly being made, both in reports separate from companies' financial filings and also in some companies' Annual Reports. In 2015 75% of the S&P 500 companies published a sustainability or corporate responsibility report and over 90% of the world's 250 largest companies did so. A number of organisations have also published useful guidelines or are developing sustainability disclosure frameworks and metrics. The GRI sustainability framework, for example, is now being widely used by companies to prepare their sustainability reports. Another organisation, SASB, is developing voluntary sustainability standards for approximately 80 industries in ten sectors. These and other constructive efforts continue to mature sustainability reporting.

Still, many believe that current sustainability reporting, even as it continues to evolve, is not adequate. Some advocate for more companies to report and on more comparable sustainability indicia and with more consistency. Others push for integrated reporting, where traditional financial reporting is combined with what to date has been primarily confined to a company's social responsibility or sustainability report.

At this juncture the path forward on enhancing sustainability reporting is clearly still developing. Unlike financial disclosures, established and agreed upon sustainability metrics for reporting do not yet exist. In many countries outside of Europe and South Africa sustainability reporting is still largely voluntary. And as you know, there is much debate about climate change and how to address it. Currently disclosure of sustainability information under SEC rules is being addressed by a combination of our materiality-based approach to disclosure, guidance on certain issues and shareholder engagement on a range of sustainability topics, whether through direct dialogue with management or under our Rule 14a-8 shareholder proposal process.

Although we are seeing increased disclosure and engagement on sustainability matters, we are taking a more focused look at such disclosures, particularly related to climate change, in our annual filings reviews. We understand however that there are those who do not believe that our materiality-based approach to sustainability disclosure goes far enough. That is one of the reasons we included a discussion of the topic in our recent Regulation S-K concept release and solicited input from investors and others on whether we should consider line item disclosure on certain issues. I encourage you to share your perspectives and give us your input on whether changes are needed, and if so, what specifically should be changed.

There is, in short, more work and thinking to be done on sustainability reporting at the SEC and by companies and investors, including on whether, when, where and how to provide disclosure and what precisely should be provided. The issue has our attention, but disclosure alone will not achieve the ultimate results many investors and other constituents are seeking. And so, I urge investors who are seeking to alter corporate behaviour on sustainability to continue to use your stewardship and influence to bring about the strategic supply change and business model changes you think need to be made by companies to address the underlying risks and priorities. Encourage and prod companies to acknowledge the sustainability objectives that are in line with what makes sense and the most sense, for their businesses. Demand that they describe what they are doing to achieve those objectives and how they are doing against your expectations. We at the SEC will continue to closely monitor developments and to engage with investors and others as we review and enhance our current rules to fulfil our obligation to investors to provide them with the information they need to make investment and voting decisions in today's world.

Now, it's obviously not possible, in my time with you today, to do justice to all of the important issues of mutual interest and priority on your conference agenda. What I can say, in closing, is that your engagement on behalf of investors and your promotion of good corporate governance around the world is very impressive and important to the SEC. I look forward to a continuing and active dialogue with you for the benefit of all investors and our global economic wellbeing. I wish you a very productive conference. Thank you for listening and for all that you do.