

# Weathering IR Climate Change

NIRI-Chicago Forecast  
2013 - 2014



## The Winds of Change: Compliance, Disclosure and Accountability in Today's 24/7 World

April 9, 2014

- Brian Breheny, Partner, Skadden Arps Slate Meagher & Flom
- Steven K. Covey, Senior Vice President, General Counsel and Chief Ethics Officer, Navistar
- Melissa Napier, Treasurer and Senior Vice President, Investor Relations, Hillshire Brands
- Moderator: Jeff Morgan, President & CEO, National Investor Relations Institute

### Key Takeaways

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**Disclosure reform is in the air.** The Dodd-Frank and JOBS Act bills created an unprecedented rulemaking agenda for the SEC, and many proposed disclosure rules are waiting to be adopted. SEC Chair Mary Jo White was in office just six months when she unveiled her comprehensive disclosure reform initiative, [The Path Forward on Disclosure](#), in a speech to the National Association of Corporate Directors.

**Disclosure has become an activist tool for non-investors to promote their agenda.** Intended to promote corporate responsibility, conflict minerals disclosure\* is one example of how non-investor stakeholders have influenced rulemaking. Labor union interest has made corporate political contribution disclosure the most common shareholder proposal submitted for proxy inclusion in the last two years. The SEC removed this issue from its 2014 regulatory agenda, though [pressure from the Hill](#) will determine if the SEC puts political contributions disclosure back on its front burner.

**What's coming this year.** The SEC hasn't adopted a disclosure rule since August 2012, so the agency may put a higher priority on implementing the Dodd-Frank-mandated CEO pay ratio disclosure. The SEC is trying to be flexible and practical in developing a compliance framework. If adopted this year, 2016 is the earliest the rule could be implemented.

**The current SEC is very focused on enforcement.** Brian Breheny, a former SEC deputy director, suggests three recent SEC cases reflect the agency's outlook about disclosure. CVS Caremark was charged with omitting critical financial data in a bond offering filing and Lions Gate Entertainment was charged with inaccurate disclosures to shareholders during its takeover fight with Carl Icahn. On every IRO's must-read list should be the [SEC's case](#) against the IRO of First Solar for violating Regulation Fair Disclosure. IROs take note: the SEC stopped short of enforcement action against First Solar because of the company's well-established culture of compliance. Reinforce your company's commitment to a culture of compliance and insist on resources from your auditors at the local and national levels.

**Risk factor management is out of control.** Steven Covey noted that in the last 10 years, the number of material risk factors Navistar reports in its Form 10-K has doubled, taking up seven full pages in the 2013 annual report. Risk factor management is on Mary Jo White's agenda, too. Melissa Napier commented on the changes Hillshire Brands implemented after its transformation from Sara Lee. She spoke about the higher level of investor interest in sustainability issues and the increase in internal discussion regarding risk. Simplified financial statements offer greater insight and clarity, which helps with financial disclosure, though her team is still working through disclosure items from the past. Both executives agreed that the larger challenge is balancing transparency and disclosure around a story that is dynamic and in motion from quarter to quarter.

— By Bess Gallanis, April 2014

\* On April 14, a divided panel of the U.S. Court of Appeals for the D.C. Circuit held that the SEC's conflict minerals disclosure rule violated the First Amendment protections of free speech and is therefore unconstitutional. At the time of publication, the implications for corporate disclosure are not clear.