

49th ANNUAL

SECURITIES REGULATION INSTITUTE

JANUARY 24-26, 2022

INSTITUTE AGENDA

All times Pacific Standard Time

VIRTUAL
EVENT

INSTITUTE DAILY SNAPSHOT

MONDAY, JANUARY 24

8–8:15 a.m. | **Welcome and Overview**

Juliann Cecchi, Assistant Dean, External Partnerships, Northwestern Pritzker School of Law, Chicago

Thomas Kim, Institute Chair, Gibson, Dunn & Crutcher LLP, Washington, DC

8:15–8:45 a.m. | **Alan B. Levenson Keynote Address**

SPEAKER

Gary Gensler, Chair, U.S. Securities and Exchange Commission, Washington, DC

8:45–9 a.m. | **Break**

9–10:15 a.m. | **The SEC in 2022**

Former SEC Commissioners and Division Directors will discuss how they expect the agency to approach its mission in 2022, including in areas relating to enforcement policy, public and private company regulation, and more.

SESSION CHAIR

Robert Jackson Jr., Pierpont Family Professor of Law, Co-Director of the Institute for Corporate Governance and Finance, and Director of the Program of Corporate Law and Policy, New York University School of Law, New York City

PANELISTS

Stephanie Avakian, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC

William Hinman, Simpson Thacher & Bartlett, Washington, DC

Troy Paredes, Founder, Paredes Strategies, New York City

Mary Jo White, Debevoise & Plimpton LLP, New York City

10:15–10:30 a.m. | **Break**

10:30–11:45 a.m. | **General Counsels Speak - Looking Ahead**

- ESG: focus on climate action plan, disclosures, and regulation
- Expanding role of GCs: from corporate culture to social impact to global affairs
- Doing business cross-border: opportunities, threats, and the future
- Cybersecurity: oversight, impact on supply chains, incident response

MONDAY, JANUARY 24

Welcome and Overview

Alan B. Levenson Keynote Address

The SEC in 2022

General Counsels Speak - Looking Ahead

Developments in Stakeholder Governance:
When the Purpose of a Corporation Goes Beyond
Engaging in "Any Lawful Act or Activity"

Capital Markets: Private Company Financing

Capital Markets for Reporting Companies

TUESDAY, JANUARY 25

Updates from SEC Senior Staff:
Division of Corporation Finance

Recurring Disclosure Challenges

Accounting and Auditing in 2022:
The Challenges Continue

Inaugural David S. Ruder Address

M&A Trends and Developments

ESG Disclosures 2.0: Their Time Has Come

Corporate Governance Developments:
Proxy Reform, Shareholder Proposals,
and Rule 10b5-1 Plans

WEDNESDAY, JANUARY 26

Updates from SEC Senior Staff: Division of
Enforcement and Office of the General Counsel

Ethics: Managing Risks in a Challenging Transaction

SEC Enforcement and Investigations

Securities Class Action and Shareholder Litigation:
Key Developments and Trends – Views from the
Plaintiff and Defense Sides

Everything You Always Wanted to Know About
Securities Law but Were Never Given the
Chance to Ask...

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SESSION CHAIR

Scott Morgan, Senior Vice President, Chief Legal Officer, Global Affairs & Secretary, Splunk Inc., San Francisco

PANELISTS

Rhonda Ferguson, Executive Vice President, Chief Legal Officer, General Counsel, and Secretary, The Allstate Corporation, Northbrook, IL

Kerry McLean, Executive Vice President, General Counsel and Corporate Secretary, Intuit Inc., Mountain View, CA

Teresa Wynn Roseborough, Executive Vice President, General Counsel, and Corporate Secretary, The Home Depot, Inc., Atlanta

Timothy Steinert, former General Counsel and Secretary, Alibaba Group, Hong Kong SAR

11:45 a.m.–12:45 p.m. | **Lunch Break**

12:45–2 p.m. | **Developments in Stakeholder Governance: When the Purpose of a Corporation Goes Beyond Engaging in “Any Lawful Act or Activity”**

- Mission-oriented IPO companies embrace PBC form
- Large Cap resistance to PBC conversion shareholder proposals
- Bespoke approaches to stakeholder governance
- Investor views on PBCs and stakeholder governance
- Fiduciary duties in the age of stakeholder governance
- Meeting the growing demand: an efficient and effective approach to EESG/*Caremark*

SESSION CHAIR

Sarah Solum, Freshfields Bruckhaus Deringer LLP, Silicon Valley, CA

PANELISTS

Richard Baer, Chief Legal Officer, Airbnb, Inc., San Francisco

Celeste Ferber, Vice President, Legal, Zymergen, Inc., Emeryville, CA

Scott Siamas, Senior Vice President & Assistant General Counsel, Corporate, Securities & Global Governance, Salesforce, Inc., San Francisco

Leo Strine Jr., Wachtell, Lipton, Rosen & Katz, New York City

2–2:15 p.m. | **Break**

2:15–3:30 p.m. | **Capital Markets: Private Company Financing**

- Crossover fund requirements in late-stage financings
- Trends in ESG financing terms
- Structuring employee liquidity programs
- SPVs and other investment fund structures

SESSION CHAIR

Allison Spinner, Wilson Sonsini Goodrich & Rosati, Palo Alto, CA

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PANELISTS

John Bautista, Orrick, Herrington & Sutcliffe LLP, San Francisco**Katherine Duncan**, Fenwick & West LLP, Seattle**Stephan Eberle**, General Counsel & Head of Limited Partner Relations, Scale Venture Partners, Foster City, CA3:30–3:45 p.m. | **Break**3:45–5 p.m. | **Capital Markets for Reporting Companies**

- Which financing alternative is right for you? Debt or equity?
- Seasoned insights: exploring the latest trends shaping the primary and secondary offerings markets
- Financial statement requirements in securities offerings and how they translate in practice, including flash numbers, non-GAAP financial metrics and pro forma financials
- Demystifying non-GAAP: recommendations for public companies, covering SEC responses to improper use of non-GAAP financial measures, and processes for disclosing key performance indicators
- What's trending: assessing and disclosing the evolving impact of COVID-19 on offerings

SESSION CHAIR

Rick Kline, Latham & Watkins LLP, Menlo Park, CA

PANELISTS

Jeffrey Karpf, Cleary Gottlieb Steen & Hamilton LLP, New York City**Katy Motiey**, Chief Administrative and Sustainability Officer, General Counsel and Corporate Secretary, Extreme Networks, Inc., San Jose, CA**David Peinsipp**, Cooley LLP, San Francisco**Thomas Yang**, Managing Director & Associate General Counsel, Bank of America Corporation, New York City

TUESDAY, JANUARY 25

Optional Roundtable

6:45-7:45 a.m. | **Inability to Pay: The Little-Known But Critical Third Line of Defense** | Sponsored by Charles River Associates

What happens when a company loses on liability, loses on damages, and is now facing fines and penalties that collectively aggregate to more than it can pay?

Learn how different federal agencies (DOJ, SEC, EPA, HHS, etc.) approach and assess this issue, and how company legal departments can best assemble and present the relevant facts and circumstances.

PANELISTS

Jordan Kraner, Principal, Forensic Services, Charles River Associates, Chicago

Ken Mathieu, Vice President, Forensic Services, Charles River Associates, Chicago

Nader Salehi, Kirkland & Ellis LLP, Washington, DC

John Tang, Jones Day, San Francisco

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8–9 a.m. | Updates from SEC Senior Staff: Division of Corporation Finance**SPEAKERS**

Erik Gerding, Deputy Director, Legal and Regulatory Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC

Renee Jones, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC

Lisa Kohl, Acting Deputy Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC

Michael Seaman, Acting Chief Counsel, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC

MODERATOR

Meredith Cross, Wilmer Cutler Pickering Hale and Dorr LLP, New York City

9–9:15 a.m. | Break**9:15–10:30 a.m. | Recurring Disclosure Challenges**

- Complying with the new MD&A rules: What's truly different?
- Transitioning ESG disclosures to '34 Act reports
- "Information bundling"
- Updating cybersecurity disclosures
- Loss contingencies
- Human capital disclosures – learning from year one

SESSION CHAIR

Thomas Kim

PANELISTS

P.J. Himelfarb, Weil, Gotshal & Manges LLP, Washington, DC

Elizabeth Morgan, King & Spalding LLP, New York City

Christina Thomas, Mayer Brown LLP, Washington, DC

Marko Zatylny, Ropes & Gray LLP, Boston

10:30–10:45 a.m. | Break**10:45 a.m.–12:10 p.m. | Accounting and Auditing in 2022: The Challenges Continue**

- SEC developments: from new leadership to what accounting comments to expect
- Performance measures and non-GAAP disclosures: still a focus
- Controls everywhere: remote workforce, ESG metrics, non-GAAP, cyber incidents, performance metrics
- New faces and new priorities at the PCAOB?
- FASB update: what's on the horizon, including (maybe) the return of goodwill amortization
- Accounting for cryptocurrency investments

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SESSION CHAIR

John White, Cravath, Swaine & Moore LLP, New York City

PANELISTS

Karen Garnett, Proskauer Rose LLP, Washington, DC

Mark Kronforst, Partner, Professional Practice, EY, Washington, DC

Lindsay McCord, Chief Accountant, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC

Amie Thuener, Vice President, Chief Accounting Officer, Alphabet Inc., Redwood City, CA

12:10–12:50 p.m. | [Luncheon Break](#)

12:50–1:25 p.m. | [Inaugural David S. Ruder Address](#)

SPEAKER

Kathaleen McCormick, Chancellor, Delaware Court of Chancery, Wilmington, DE

1:25–1:40 p.m. | [Break](#)

1:40–2:55 p.m. | [M&A Trends and Developments](#)

- M&A trends in 2021/2022 and the state of the M&A marketplace
- Regulatory issues in M&A deals, including the expanding role of CFIUS in cross-border inbound M&A transactions
- When worlds collide: PE sellers vs. serial strategic buyers

SESSION CHAIR

Richard Climan, Hogan Lovells US LLP, Silicon Valley, CA

PANELISTS

Ting Chen, Cravath, Swaine & Moore LLP, New York City

David Katz, Wachtell, Lipton, Rosen & Katz, New York City

Edward Lee, Kirkland & Ellis LLP, New York City

Sae Muzumdar, Gibson, Dunn & Crutcher LLP, New York City

2:55–3:25 p.m. | [Break Sponsored By Houlihan Lokey](#)

3:25–4:25 p.m. | [ESG Disclosures 2.0: Their Time Has Come](#)

- Why ESG information matters and how it is used – investor perspectives
- Key elements of leading ESG programs from the inside – how to do a materiality analysis, how to choose an ESG standard, and how to gather and prepare ESG disclosures
- Current state of affairs – reporting standards, SEC developments, global developments in ESG governance and disclosures

SESSION CHAIR

Keir Gumbs, Chief Legal Officer, Broadridge Financial Solutions, Inc., Washington, DC

PANELISTS

Melissa Campbell Duru, Covington & Burling LLP, Washington, DC

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Thomas Kamei, Executive Director, Investor, Counterpoint Global, Morgan Stanley Investment Management, Los Angeles**Marian Macindoe**, Head of ESG Strategy & Engagement, Uber Technologies, Inc., San Francisco**Granville Martin**, Director of Policy for the Americas, The Value Reporting Foundation, San Francisco**4:25–5:40 p.m. | Corporate Governance Developments: Proxy Reform, Shareholder Proposals, and Rule 10b5-1 Plans**

- Updates on the SEC's proxy rules reforms – universal proxy, proxy voting advice, & Rule 14a-8
- Shareholder proposals trends and developments
- Impact of potential Rule 10b5-1 amendments and current market trends
- Re-proposed rulemaking on claw-backs

SESSION CHAIR**Brian Breheny**, Skadden, Arps, Slate, Meagher & Flom LLP, Washington, DC**PANELISTS****Lillian Brown**, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC**Irving Gomez**, Vice President, Corporate and Securities, Compliance, and Associate General Counsel, PagerDuty, Inc., San Francisco**Adrienne Monley**, Managing Director at PJT Camberview, PJT Partners, Inc., New York City**Nabanita Chaterjee Nag**, General Counsel - Corporate, Norfolk Southern Corporation, Atlanta**WEDNESDAY, JANUARY 26****8–9 a.m. | Updates from SEC Senior Staff: Division of Enforcement****SPEAKER****Gurbir Grewal**, Director, Division of Enforcement, U.S. Securities and Exchange Commission, Washington, DC**Sanjay Wadhwa**, Deputy Director, Division of Enforcement, U.S. Securities and Exchange Commission, Washington, DC**MODERATOR****Dixie Johnson**, Institute Vice Chair, King & Spalding LLP, Washington, DC**9–9:15 a.m. | Break****9:15–10:15 a.m. | Ethics: Managing Risks in a Challenging Transaction**

- The specter of severe claims against lawyers
- Risks in a difficult transactional due diligence
- Fulfilling Rule 1.4 communication obligations with a “get the deal done” client

SESSION CHAIR**Karl Groskaufmanis**, Fried, Frank, Harris, Shriver & Jacobson LLP, Washington, DC**PANELISTS****Martin Checov**, O'Melveny & Myers LLP, San Francisco**Laura Lin**, Munger Tolles & Olson LLP, San Francisco

All times Pacific Standard Time

10:15–10:30 a.m. | Break

10:30–11:45 a.m. | SEC Enforcement and Investigations

- EPS and other recent enforcement initiatives
- Cybersecurity and managing disclosure issues
- ESG and forward looking statements
- Whistleblowers – managing the situation
- Enforcement sanctions and waivers in the new administration
- Insider trading, Reg FD, perks, and other hot topics

SESSION CHAIR

Joan McKown, Jones Day, Washington DC

PANELISTS

Robert Cohen, Davis Polk & Wardwell LLP, Washington DC

Elaine Greenberg, Greenberg Traurig, LLP, Washington, DC

Arian June, Debevoise & Plimpton LLP, Washington DC

Jane Norberg, Arnold & Porter Kaye Scholer LLP, Washington, DC

11:45 a.m.–12 p.m. | Break

12–1:15 p.m. | Securities Class Action and Shareholder Litigation: Key Developments and Trends –
Views from the Plaintiff and Defense Sides

- Securities Fraud Class Action Update: class certification after *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*
- '33 Act Litigation Update: state court litigation, federal forum provisions, and other trends
- Merger and shareholder derivative litigation: developments under Section 14(a), as well as Delaware law, ESG-driven cases, and other trends
- SPAC Litigation: key developments in an important emerging area
- Practical perspectives on valuing, handling, and resolving securities litigation from the plaintiff and defense perspectives

SESSION CHAIR

Adam Hakki, Shearman & Sterling LLP, New York City

PANELISTS

Sara Brody, Sidley Austin LLP, San Francisco

John Clarke Jr., DLA Piper LLP (US), New York City

Darren Robbins, Robbins Geller Rudman & Dowd LLP, San Diego

Jeffrey Scott, Sullivan & Cromwell LLP, New York City

1:15–1:30 p.m. | Lunch Break

All times Pacific Standard Time

1:30–2:30 p.m. | Everything You Always Wanted to Know About Securities Law but Were Never Given the Chance to Ask...

a tribute to Marty Dunn

SESSION CHAIR

David Lynn, Morrison & Foerster LLP, Washington, DC

PANELISTS

Lillian Brown

Dennis Garris, Alston & Bird LLP, Washington DC

Keir Gumbs

Scott Lesmes, Morrison & Foerster LLP, Washington, DC

2:30 p.m. | Institute Concludes

As of 1.13.2022

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