

Six Things SEC Chair White Wants Directors To Know About How To Avoid Being On The Receiving End Of An Enforcement Action

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After [SEC Chair Mary Jo White](#) announced last fall that the SEC's enforcement program included a new focus "deficient gatekeepers," such as directors, and the SEC filed two separate cases against audit committee chairs in March ([case 1](#) and [case 2](#)), directors of public companies could be forgiven for feeling as if they had targets on their backs. Nevertheless, [White told those attending the annual Stanford Directors' College](#) earlier this month that that focus and those recent cases "should not strike fear in the heart of a conscientious, diligent director." She then proceeded to outline what a director can do to qualify in the SEC's eyes as one of those conscientious, diligent directors.

1. Make sure that the board and the CEO set the tone at the top that "good corporate governance and rigorous compliance" are both expected and essential. This includes ensuring there is a strong compliance program which not only thoroughly investigates complaints, but also rewards employees "who do the right thing."
2. As an individual director, "learn and be engaged." Not only must a director understand his or her own company's business, but a director also needs to know what is going on in the industry as a whole and in the broader market generally.
3. Become familiar with the mindset of the company's primary regulators by reviewing their public pronouncements or even visiting them. White held up as an example an audit committee chair who annually visits his company's primary regulators.
4. Listen to the shareholders. White suggested it was important to review shareholder proposals carefully -- even those submitted to other companies which "could be relevant to your company."
5. If something goes wrong, consider self-reporting to earn credit for cooperation. White noted that, while self-reporting, cooperation, self-policing and remediation are all considered in the decision of whether to bring an enforcement action, self-reporting is "especially important to both the SEC and the Department of Justice."
6. Finally, take all whistleblowers seriously, even those who have cried wolf for no reason before. White advised that, while a whistleblower's earlier nine tips may never have been corroborated, "her tenth tip may be right on target."

Her speech may be found [here](#).