

Client Alert

SEC Chair Outlines Rulemaking Considerations for Potential New Climate-Related Disclosure Requirement

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On July 28, 2021, Securities and Exchange Commission (“SEC”) Chair Gary Gensler, speaking at a webinar titled “Climate and Global Financial Markets,” set forth certain considerations to guide his staff in developing a rule that will require mandatory disclosure on climate risks by the end of 2021.

Up until now, SEC guidelines on climate disclosure were voluntary, resulting in inconsistent disclosure among public companies. In March 2021, the SEC solicited comments from the public on climate change disclosures and, according to Chair Gensler, more than 550 unique comment letters were submitted, three-quarters of which supported mandatory climate disclosure rules. Chair Gensler believes that “consistent, comparable, decision-useful disclosures” would be beneficial to companies and investors alike.

Rulemaking Considerations for Mandatory Disclosure

Chair Gensler has asked the Staff to consider the following in order to create a rule that will require “consistent, comparable, and decision-useful” climate-risk disclosures:

- **Content of the Disclosure**
 - **Qualitative disclosure:** How does the company’s leadership manage climate-related risks and opportunities, and how does that play into the company’s overall strategy?
 - **Quantitative disclosure:** Disclose metrics related to greenhouse gas emissions, the financial impacts of climate change, and what progress the company has made toward climate-related goals.
- **Location of the Disclosure**
 - Whether companies should be required to report climate-risk disclosure on Form 10-K, noting that investors typically rely on a company’s 10-K when making investment decisions.
- **Different Industry Standards**
 - Whether there should be certain metrics for specific industries, such as the banking, insurance or transportation sectors.
- **Scenario Analyses**
 - How might a business adapt to the range of possible physical, legal, market and economic changes that it may face in the future (i.e. physical risks associated with climate change, transition risks associated with stated commitments by companies, and requirements from jurisdictions)?
- **Seek Guidance from Existing Frameworks**
 - Learn from external standard-setters such as the Task Force on Climate-related Financial Disclosure framework.

In addition to the above, Chair Gensler directed his staff to consider recommendations about whether fund managers should disclose the criteria and underlying data they use to label themselves as “green” or “sustainable.”

Although there have not yet been any rules published mandating climate-risk disclosure, SEC registrants are advised to review their current climate-related disclosure and begin to evaluate whether the existing disclosure would satisfy the considerations put forth by Chair Gensler.

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