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TYPES NOT MAPPED YET April 05, 2021 | TTR not mapped yet | Ryan Russell Kemper, Michele C. Kloeppel

SEC emphasizes ESG by establishing new website and taking public comments on climate disclosure

The U.S. Securities and Exchange Commission recently established a new webpage entitled "SEC Response to Climate and ESG Risks and Opportunities." The new webpage is the latest in several moves by the Biden SEC that focus on prioritizing climate and social justice issues. Although this is not the first time that the agency has dedicated resources to climate issues, it has been awhile. The SEC first issued climate change disclosure guidance in 2010. Since then, various agency committees have discussed climate and ESG issues, but those efforts did not receive the attention that the current SEC has engendered. The new webpage aggregates information in a single location and provides a hub to access the flurry of new information released by the SEC on ESG since President Biden named Allison Herren Lee acting chair in January. The major categories of information include:

- Request for Public Comments on Climate Disclosure Policy;
- Review of Climate Related Disclosure Information;
- Division of Examinations 2021 Examination Priorities;
- Enforcement Focused on ESG Issues; and
- ESG Investor Bulletins.

For now, most of the categories link to SEC news releases on these topics and relate to the various new directives issued to SEC staff. For example, the climate-related disclosure category links to the SEC's February 24, 2021 public statement where Chair Herren-Lee directed the Division of Corporation Finance to begin the process of updating the 2010 Climate Disclosure Guidance. Likewise, the enforcement category links to the SEC's March 4th news release that announced the creation of the "Climate and ESG Task Force" in the Division of Enforcement and describes the task force's initial focus as "identify[ing] any material gaps or misstatements in issuers' disclosure of climate risks under existing rules [and] analyz[ing] disclosure and compliance issues relating to investment advisers' and funds' ESG strategies."

"Like giving a fish a bicycle" or "Right on the mark"

Perhaps the most interesting portion of the new website is the inclusion of the SEC's recent request for public comments on climate change disclosure policy. On March 15th, the SEC issued a request for public comments related to the adequacy of the current disclosure guidance and how the SEC should change it going forward. The request includes 15 lengthy questions posed by the SEC for commenters' consideration, including whether the agency should develop separate standards for different industries (e.g., oil and gas, financial sector, transportation), whether and how the standards should be enforced, and whether the climate-related disclosure standards should be included in a broader ESG framework or be kept separate from social justice and governance issues.

The response to the SEC initiatives run the gauntlet of opinion. Some commenters have stated that they believe the SEC's focus on climate change was overdue. Others, however, questioned whether the SEC had the legal authority to delve into climate issues at all and others argued that it should consider climate and other ESG issues only to the extent those issues impact a company's financial position. More interestingly, one commenter, while in agreement that climate-change disclosures are necessary, questioned the SEC's in-house expertise regarding climate change saying that the SEC exercising this authority “is like giving a fish a bicycle” and encouraged the agency to hire climate experts.

Conclusion

Whether the majority argue the SEC is right on the mark with this new intensive focus on climate or whether the prevailing thought is that climate issues should be left to others with scientific expertise remains to be seen. However, either way, public companies need to be fully attuned to climate change issues and careful that any disclosures regarding climate change and other ESG matters are accurate and supportable until the disclosure regiment is developed.

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