

SEC's Focus on Climate and Other ESG Disclosures

By Jeffrey T. Haughey
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The Acting Chair of the SEC, Allison Herren Lee, the Acting Director of the SEC's Division of Corporation Finance, John Coates, and President Biden's choice for the new Chair of the SEC, Gary Gensler, have all made it clear that one of the primary focuses of the SEC going forward will be to review climate and other ESG disclosures, develop new guidance and possibly new rules related to these topics, and more aggressively enforce the rules that relate to climate and other ESG topics.

The following is a brief summary of the existing SEC guidance, and recent statements and speeches by representatives of the SEC on climate and other ESG disclosure obligations:

- **2010 Climate Change Disclosure Guidance:** [This principles-based guidance](#) from over a decade ago highlights a number of climate topics that could impact disclosure and is likely to be updated by the SEC.
- **December 2020 ESG Subcommittee of SEC Asset Management Advisory Committee:** [This Subcommittee recommended](#) that the Committee require the adoption of standards by which corporate issuers disclose material ESG risks.
- **February 24, 2021 Statement by SEC Acting Chair Lee:** [The Acting Chair announced](#) that she had directed the staff of Corporation Finance to closely review climate-related disclosures in SEC filings and update the 2010 Climate Change Disclosure guidance.
- **March 2, 2021 Confirmation Hearing of Gary Gensler, Proposed SEC Chair:** He indicated that [he would issue new guidance](#) on climate risk disclosures, subject to materiality considerations.
- **March 4, 2021 Announcement of the Creation of an Enforcement Task Force on Climate and Other ESG Issues:** [This Task Force](#) is to identify ESG-related misconduct and disclosure/compliance issues related to Investment Advisers' and Funds' ESG strategies. It is possible that this will result in enforcement actions even prior to the issuance of new guidance or rules.
- **March 11, 2021 Statement of CorpFin Acting Director Coates:** [The Acting Director emphasized](#) the need for ESG disclosures to keep pace with developments. While there would be a number of challenging questions to be addressed, he advocated that the SEC take the lead in the creation of an effective ESG disclosure system, either

domestically or internationally. He went so far as to state that the arguments for a single global ESG reporting system are persuasive.

- **March 15, 2021 Statement of SEC Acting Chair Lee:** [The Acting Chair sought public input](#) on 15 questions related to climate change disclosures, including the need for global standards and the application of this area to private companies in exempt offerings, investment advisers and funds. She noted that she has asked the staff to evaluate rules for consistent, comparable, and reliable information on climate change.
- **March 15, 2021 Speech of SEC Acting Chair Lee:** This was a [wide-ranging speech](#) at the Center for American Progress on meeting investor demand for climate and other ESG information at the SEC. She noted that climate and ESG issues are front and center at the SEC, particularly given the significant growth in ESG investing. While climate change is getting much of the attention, she noted that the standardization of disclosure of the following ESG topics are also getting attention at the SEC:
 - human capital,
 - workplace diversity,
 - human rights,
 - whether companies are meeting their stated carbon neutral pledges, and
 - political contributions.

With respect to the shareholder proposal process, she has asked the staff to develop proposals to revise prior guidance on the no-action process and potentially revising Rule 14a-8. She provided a number of suggestions related to proxy voting by investment advisers and funds and related obligations and disclosures. She is pushing to finalize a universal proxy rule that would include all nominees in a contested election. She also wondered whether there should be a domestic or international sustainability standard setter.

- **March 22, 2021 SEC Press Release** [announced a new page](#) on the SEC's website devoted to agency actions and the latest information about climate and ESG investing.
- **April 9, 2021 Exam Unit's Risk Alert:** The [risk alert that was issued](#) warns advisers and funds of the risks of misleading statements, inadequate controls to make sure ESG marketing is consistent with the firm's practices, and not having compliance programs that "adequately address relevant ESG issues."

What Should Issuers be Doing?

- Review the 2010 climate disclosure guidance and review the issuer's current climate disclosures to confirm that they satisfy the requirements.
- Continue to engage with institutional investors to get their views on the subject.
- Review existing disclosures in SEC filings to confirm that they are consistent with other sustainability disclosures on the issuer's website or elsewhere.

- Be prepared to respond to SEC comments on its SEC filings related to climate or ESG matters, monitor enforcement and litigation proceedings in this area, and react accordingly.

For questions regarding climate and other ESG disclosure obligations, please contact your GableGotwals attorney or a member of our [Corporate & Securities team](#).



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