Updates
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Climate Change Takes Center Stage at the SEC

Over the past few weeks, the U.S. Securities and Exchange Commission has taken several actions that put climate change front and center, reflecting the importance to many investors of climate change related disclosures.

In early February, the SEC announced the addition of Satyam Khanna as a senior policy advisor charged with coordinating and overseeing efforts related to climate and other environmental, social, and governance (ESG) issues. Mr. Khanna is the first-ever senior policy advisor for ESG issues at the SEC. Since then, the SEC has announced a rapid series of additional initiatives.

On February 24, Acting Chair Allison Herren Lee directed the Division of Corporation Finance to "enhance its focus on climate-related disclosure in public company filings" and to begin updating its 2010 guidance on climate change related disclosures. The 2010 guidance advised companies that climate change, through physical, environmental changes as well as domestic and global regulatory, legislative, technological, and/or scientific developments, could have material effects on their businesses and operations, and sought to elicit disclosure on these topics as material risks, business developments, and known trends. The Division of Corporation Finance will assess whether public company disclosures in this area comply with the 2010 guidance and other SEC rules and will consider investor needs for information to manage climate-related risk. It will also engage directly with public companies to begin updating the 2010 guidance to reflect developments over the past decade.

Acting Chair Lee followed the direction to the Division of Corporation Finance with public comments at an energy industry conference stating that the SEC is engaging with the Financial Stability Board and the International Organization of Securities Commissions, international organizations that have pushed for climate disclosure standards, to better understand the global risks of climate change.

Meanwhile, President Biden's nominee to be the next SEC chair, Gary Gensler, said during his confirmation hearing that investors want more information about climate risks and that disclosure requirements should be grounded in what reasonable investors find material. If confirmed, Mr. Gensler indicated to the Senate Committee on Banking, Housing, and Urban Affairs, he would likely pursue rulemaking around climate risk disclosures and perhaps other ESG topics.

Then the SEC's Division of Examinations announced a greater emphasis on climate risks and other ESG matters in its 2021 examination priorities. Acting Chair Lee explained that "the Division is enhancing its focus on climate and ESG-related risks by examining proxy voting policies and practices to ensure voting aligns with investors' best interests and expectations, as well as firms' business continuity plans in light of intensifying physical risks associated with climate change." The Division will also look closely at asset managers of funds pursuing ESG strategies, focusing on the consistency and adequacy of ESG disclosures and practices.

The SEC also announced that it is creating a 22-member Climate and ESG Task Force to be led by Kelly Gibson within the Division of Enforcement. The Task Force will develop initiatives to identify misconduct and will start by using "sophisticated data analysis to mine and assess" material gaps or misstatements in public company climate risk disclosures. The Task Force will coordinate the ESG-related activities of the Division of Corporation Finance, Division of Investment Management, and Division of Examination and will analyze disclosure and compliance issues around asset managers' ESG strategies.

Although Republican Commissioners Hester Peirce and Elad Roisman responded with a public letter that "these new climate-related announcements raise more questions than they answer," these actions appear to reflect a greater emphasis on climate and ESG issues at the SEC going forward.

For public companies, the combination of the directive to the Division of Corporation Finance and the creation of the Climate and ESG Task Force likely foreshadow SEC comment letters on existing disclosure and updates to the 2010 guidance, as well as the potential for new rulemaking.

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