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The SEC Is All in on ESG, Including (Potentially) D&I Issues

Acting SEC Chair Allison Herren Lee continues to aggressively promote the SEC's ESG agenda by launching a dedicated ESG webpage on the SEC's website and speaking in support of ESG initiatives. The SEC's Asset Management Advisory Committee ("AMAC") is also moving forward with important ESG recommendations, including promotion of diversity and inclusion measures.

The "Green" Page @ sec.gov

On March 22, 2021, the SEC launched a prominent new web page titled "[SEC Response to Climate and ESG Risks and Opportunities](#)." Commissioner Herren Lee [explained](#) that the page is intended to provide investors with information about the ongoing "all-of-SEC approach" to assessing how climate and ESG intersect with the SEC's broader regulatory framework. On the brightly colored, environmentally themed page, the SEC highlights its recent ESG-related activities, which as of March 25, 2021, included the:

- [ESG Funds Investor Bulletin](#);
- [Climate and ESG Enforcement Task Force](#);
- [2021 Examination Priorities](#);
- [Statement on the Review of Climate-Related Disclosure](#); and
- [Request for Comment on Climate-Related Disclosure](#).

You can read more about these SEC initiatives in [our prior posts](#) in this ESG series.

ESG Proxy Voting

[Speaking](#) at the March 17, 2021, Investment Company Institute's ("ICI") virtual conference on mutual fund proxy voting and disclosure matters, Commissioner Herren Lee described "accountability on climate and ESG matters" as a fundamental component of shareholder democracy. Yet the "soaring demand" for funds with ESG strategies, particularly among younger generations that stand to inherit the largest transfer of wealth in U.S. history, she said, stands in contrast to the proxy voting record of many funds. Accordingly, the SEC is revisiting [Form N-PX](#) to ensure that retail investors have "meaningful insight into how their money is voted," including on ESG issues. New rulemaking could, "for example, standardize voting disclosures, structure and tag the data, provide more clarity in the description of issues voted on, provide the number of shares voted versus shares available to vote, and facilitate more timely disclosure." Commissioner Herren Lee also noted that the SEC is revisiting its [2019 guidance](#) on investment adviser fiduciary responsibilities with respect to proxy voting, to ensure that advisers are not steered towards abstaining from voting "without sufficient data or analysis to support the wisdom of doing so" and that advisers "understand how to weigh competing concerns of all types in deciding whether and how to cast votes on behalf of their beneficiaries."

AMAC Recommendations

At the March 19, 2021, meeting of AMAC, its Diversity & Inclusion ("D&I") Sub-Committee discussed recommendations that it, a group of asset management industry players, may make to the SEC. These preliminary recommendations would advise the SEC to:

- establish diversity as a "core value and material fact" for consideration across the SEC;

- promote D&I practices by SEC-regulated entities;
- require demographic data to be included in investment advisers' Form ADV disclosure regarding board members, officers, and employees; and
- clarify that advisers may engage smaller asset managers, with lower asset levels and shorter performance histories, without breaching their fiduciary duties.

In a late 2020 speech, Commissioner Herren Lee [championed](#) the disclosure of diversity data by public companies as a driver of corporate behavior. She said that the SEC should better integrate its Office of Minority and Women Inclusion into policymaking and understanding how SEC rulemaking may affect existing racial, gender, and other disparities, or otherwise affect diversity concerns. She further suggested the SEC should collaborate with the Consumer Financial Protection Bureau and the Small Business Administration to combat discrimination and support women and minority-owned small businesses. On March 19, 2021, the AMAC also considered the [preliminary recommendations](#) of its ESG Sub-Committee, also composed of industry players, which were first presented in late 2020 and would advise the SEC to:

- require public companies to adopt standards for the disclosure of material ESG risks, utilize standard-setters' frameworks, and disclose material ESG risks consistently with other financial disclosures; and
- require disclosure from ESG funds that aligns with the taxonomy developed by the ICI ESG Working Group and clearly describes the fund's investment strategy, investment priorities, and non-financial objectives (such as environmental impact or adherence to religious requirements), as well as an plans for ESG proxy voting and other share ownership activities.

Speaking before the AMAC meeting, Commissioner Caroline Crenshaw [emphasized](#) the need for "a clear disclosure regime that yields consistent, comparable, reliable, and understandable ESG disclosures to investors." The ESG Sub-Committee has yet to submit its final recommendations to the SEC.

Conclusion

As the SEC will undoubtedly update its new Climate and ESG page going forward, we'll continue to cover ESG-related regulatory developments as they arise. Our next post will address the new Climate Risk Unit at the Commodity Futures and Trading Commission.

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