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Public Chatter

The SEC’s Climate Proposal: Board Oversight

Digging further into the **SEC's proposing release for climate disclosure**, the SEC's proposal would elicit disclosure about a board's oversight of climate-related matters. For some companies, this type of disclosure undoubtedly would impact how much time and resources they devote to climate issues going forward.

The Disclosure Requirements As noted starting on page 93 of the proposing release, proposed Item 1501(a) of Regulation S-K would require quite a bit of detailed disclosure about board oversight of climate-related matters:

- The identity of those directors or board committees responsible for the oversight of climate-related risks
- Whether any directors have expertise in climate-related risks
- The processes and frequency by which the board - or any board committees - discuss climate-related risks, including how the board is informed about climate-related risks
- Whether - and how - the board (or any board committees) considers climate-related risks as part of its business strategy, risk management, and financial oversight
- Whether - and how - the board sets climate-related targets or goals and how it oversees progress against those targets or goals

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Identifying Responsible Directors & Board Committees The first prong of the board governance requirement - the one about identifying which directors and board committees have climate responsibilities - could quickly become dated. Particularly for those industries heavily impacted by climate change, it's not far-fetched to think of each - and every - board committee (as well as the full board) discussing climate as part of their committee's purview.

Directors With Climate Expertise When it comes to disclosure about whether boards have any directors with expertise in climate-related risks, this obviously might spur even more companies to recruit directors with this kind of background. That already is something that has been a growing trend. Many of these climate experts aren't the traditional C-suite officers that get recruited onto boards. Note that the proposed rule would require disclosure "in such detail as necessary to fully describe the nature of the expertise."

Processes – and Frequency – of Climate Discussions (and Board Materials) This prong really gets into the nitty gritty of what the board does: a description of the processes and frequency by which the board - or any board committees - discuss climate-related risks. And "how the board is informed" about these risks, which would seem to boil down to a discussion of the board materials. This will require the corporate secretary to keep track of the discussions when climate is mentioned, which could be a little tricky. What if the discussion is "there's nothing new to report." Does that count towards "frequency"? Or what if a single board committee meeting has climate on the agenda three separate times? Does that count as "one" or "three" towards frequency? This type of disclosure requirement seems to get too far into the weeds of board meeting processes, eliciting disclosure that would be more detailed than typically entered into the board minutes. And a description of related board materials should definitely be considered a unique type of disclosure – and perhaps push corporate secretaries to overload directors with too much climate-related information.

Business Strategy, Risk Management & Financial Oversight This prong gets to the heart of what investors really want to know. Investors want to know how boards are looking at climate-related risks and opportunities as part of their business strategies. Are they engaging in the proper risk oversight when it comes to climate? The danger here for companies is that some companies might disclose that their boards are baking climate considerations into their business strategies – but that might not really be the case. Disclosure lawyers will want to really kick the tires on this one.

Board Oversight of Targets & Goals If companies make climate pledges, smart boards should be informed about what the plan is to meet the targets and goals associated with that pledge. And checking on the interim progress being made towards that end. This type of disclosure is just one piece of a larger set of disclosures that companies would be making about their targets and goals under the SEC's proposal, as described in **our blog** devoted to that topic.

Here are our other blogs about the SEC's climate proposal so far: 1. **SEC Proposes Climate Disclosure Rules: 9 Things to Know** 2. **"How Much Is This Gonna Cost Us?" The SEC's Climate Economic Analysis** 3. **The SEC's Climate Proposal: Where Did We Wind Up With "Materiality"?** 4. **The SEC's Climate Proposal: When Should Scope 3 Emissions Be Considered "Material"?** 5. **The SEC's Climate Proposal: Assessing "Physical Risks"** 6. **The SEC's Climate Proposal: Assessing "Transition Risks"** 7. **In-House Corner: Climate Disclosure Bracketology"** 8. **The SEC's Climate Proposal: Disclosing Carbon Offsets** 9. **The SEC's Climate Proposal: Disclosing Internal Carbon Pricing** 10. **The SEC's Climate Proposal: Impact on Financial Statements** 11. **The SEC's Climate Proposal: Disclosing Targets & Goals**

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