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How to Write a Comment Letter to the SEC on a Rulemaking: The Mechanics

Given the heightened interest in the SEC's proposed rule on climate, in a series of two blogs, I'll be covering the nuts & bolts of sending in a comment letter to the SEC about a proposed rule. This first blog covers the mechanics; the next blog will provide 8 tips about how to put your best foot forward if you decide to submit a comment letter (as well as addressing whether you should even bother to submit a comment letter). When the SEC proposes a rule – or even issues a "concept release" – as required by the Administrative Procedures Act, the general public is invited to submit a letter to express their views on the proposal. Here's the mechanical steps: **1. Read the Proposing Release** - You should read the rule proposal before you put pen to paper – go to the SEC's website – and under the "Regulation" tab, you will find "[Proposed Rules](#)" as the second item down. From there, you're looking for the "proposing release" specifically posted for your topic. [If you're looking for a "concept release" – meaning the SEC hasn't even proposed a specific rule yet, but wants input into writing a proposal – go to that same "Regulation" tab but then look all the way to the list of items that are listed all the way on the left side under "Regulatory Actions" (which is not the same as the drop-down list) and you'll see that "Concept Releases" is the 5th one down.]

2. Consider the Proposed Rule Text - Once you find the proposing release you want, the actual rule text that is proposed will be way at the back – but that's going to be hard to read, hard to decipher, in many cases. However, the actual rule text is the most important part of the proposing release since that will be the determinative law once a final rule is adopted. If you want changes to a proposed rule, it's helpful for the SEC to submit your proposed changes by redlining the actual rule text. Not many people do this, but if you're looking to be as persuasive as possible, you might consider this.

3. The Juicy Stuff is in the First Half of the Proposing Release - It's best to read the stuff in the first half of the proposing release – specifically the questions that the SEC poses as those are the areas where the SEC really desires input. Don't feel guilty if you don't read the entire proposing release. Few people do – and that's perfectly fine.

4. The Stuff Nearer the Back Can Be Boring (Except Perhaps the Economic Analysis) - The stuff at the back about the Paperwork Reduction Act, the Initial Regulatory Flexibility Analysis, is an important exercise for the SEC to go through – like all federal agencies – to ensure the SEC complies with the laws it needs to follow as part of the rulemaking process. That stuff probably isn't worth reading unless you've got time to kill. An exception is if your concerns about the proposal relate to the economic impact of the proposal. If so, you will be reading sections of the proposing release near the back. Here's [my blog](#) that summarizes the SEC's economic analysis of the climate disclosure rule proposal.

5. How to Actually Submit Your Comment Letter Online - Once you write your letter, submitting it to the SEC is almost too easy – it's as easy as pushing a button. Beneath the proposing release for which you want to comment upon, you click the link labeled "Submit comments on [the file number assigned by the SEC for this rulemaking]"; then you fill out the form. The file number for the climate disclosure rulemaking is S7-10-22. You're allowed to attach up to three documents – maybe your comment letter has two pieces of supporting documentation that you want to submit. In most cases, you will just be submitting your comment letter without anything else in support.

6. Options to Submit Comment Letters By Email (and Paper) - As noted on the SEC's own page about "[How to Submit Comments](#)," you do have the option to email comment letters or even send them in by paper. Email is fine – but it's important to follow their instructions and include the "file number" for the rule in the subject line. There is room for human error when you email comments in, so be mindful of that. Personally, I would

never send in a comment letter by paper and force the Staff to scan what you send in. There is too much room for human error doing it that way.

7. Where Your Comment Letter Will Show Up - The SEC will then post your comment letter on a page containing all the comment letters related to that particular rule proposal. The SEC posts submitted letters in chronological order. Note that the SEC will post nearly anything that it receives – it even will post comment letters that might be considered gibberish. That's how easy it is. Typically, it will take a few days for the SEC to post your comment letter, but eventually you can see your letter posted. It will be accessible if you click in the link in the statement - "*Comments received [are available](#) for this proposal*" – which is beneath the proposing release related to your topic. Some parties that comment on proposed rules want to publicize their comment letters more broadly. If you are looking to make a splash - or plan to put out a press release about the comment letter you've submitted - you might consider including a copy of the letter with the press release. Since you won't know exactly when your letter will show up on the SEC's site, it might be hard to reference or link to the comment letter on the SEC's site initially since there is that delay between submitting a letter online to the SEC and it appearing on the SEC's site. By the way, here's where you'll find [comment letters already submitted about the SEC's climate proposal](#).

8. Form Comment Letters Are Combined - Note that the SEC combines "form letters" that it receives – displaying a running tally of how many form letters have been received so far. There may well be multiple form letters for a particular rulemaking. Right now, there are four different form comment letters about the SEC's climate proposal – two of which have several dozen duplicates; one has 400 and one has over 5000. I'm sure we will see far more as the May 20th deadline approaches.

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