

How to Write a Comment Letter to the SEC on a Rulemaking: 8 Tips to Be Persuasive

Given the heightened interest in the SEC's proposed rule on climate, in a series of two blogs, I'm covering the nuts & bolts of sending in a comment letter to the SEC about a proposed rule. My [first blog](#) covered the mechanics; this second blog provides 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). Letters from companies themselves often are helpful to the SEC when they are deciding whether to change what they proposed in a rule. Companies tend to have practical insight into how a proposed rule might impact them that other commenters don't have. The tricky thing is that many companies – understandably so – don't want their name out in the public domain about having taken a position on a particular rulemaking. This concern probably has never been as pronounced as it is with the SEC's climate disclosure proposal. There are so many stakeholders interested in climate – for good reason – and important ones at that. Employees, shareholders, customers, suppliers, communities, politicians, you name it. So I imagine that many companies will be providing input to their trade associations and other groups - and not commenting under their own name. Note that several public companies submitted comment letters in response to the SEC's 2021 request for public input on climate change disclosures, so it's likely that at least a few companies will decide to comment directly on the rule proposal itself. Here are 8 tips about how to put your best foot forward when you submit comments to the SEC on a rule proposal: **1. Make the Comment Letter "Usable"** – There is no specific format for how your letter should look like. It can look like chicken scratch. It can be 500 pages long. But if you're truly trying to influence the SEC, you want to write in a way that is persuasive, right? You want to write clearly, format it in a way so your arguments can be easily understood. You want to be specific and direct about what you want. There's nothing wrong with organization techniques like bullets, numbering, charts and graphics. And don't make it 500 pages long – quantity doesn't beat quality here.

2. You Don't Have to Answer the Proposal's Questions (But It's Not a Bad Idea) - The SEC put those questions in its proposing release for a reason. You certainly don't have to answer all of the questions – or answer any of them. But if what you want to comment upon actually matches one (or more) of the SEC's questions, please answer them – and when you do so, be specific and indicate in your letter that you're answering this particular question found in this section on this page of the proposing release. Of course, you might not care about the SEC's questions. You might be submitting a comment letter for other reasons. Maybe you're flying closer to a 10,000-foot level with your input. Or you're coming at the rule proposal in a totally different way than the SEC proposed. It's totally fine to not address the SEC's questions directly. Most comment letters don't do it.

3. Be Timely & Even Be Early If You Can – When the SEC issues a proposing release, it will indicate what the deadline is for comments. If you really know what you want to say – and you think it can be persuasive to other commentators - get your comment letter in early as the SEC posts the comment letters it receives on a rolling basis. Meaning it will get posted soon after you submit it – even if it's sent to the SEC well before the comment deadline. Then others submitting comments can consider your arguments and decide whether to join your bandwagon and make similar points. And that's a good thing – strength in numbers can help persuade the SEC this is something that the people want. If for some reason you miss the comment letter deadline, send it in anyway as the SEC's policy is to consider all comments received up until the time it takes action. Some groups are notorious for missing the deadline fairly consistently.

4. Submit Your Letter As Part of a Group – If you're worried about backlash resulting from being "on the

record" – having it out there publicly that you took a certain position on a proposal – give input about a comment letter to a group that your company is a member of. That way, your company's name won't be out there for the world to see. This happens a lot with trade associations - they get input from their members and submit comment letters based on that feedback. On the other hand, if you don't care about who knows that you took a certain position, you can submit your own letter - even if you're part of a group and influenced how that group's comment letter looks.

5. Draft Actual Rule Text - It's helpful to the SEC if you want changes to a proposed rule to submit redlined changes to the actual rule text. Not many people do this, but if you're looking to be as persuasive as possible, you might consider this. If you're part of a group that has staffers that are fairly sophisticated about the SEC's rulemaking process – or perhaps savvy about these kinds of things yourself – you might try your hand at drumming up draft rule text. An added benefit of this exercise is that it allows you to see what steps are required for the SEC to implement your ideas. But this can be complex, so few comment letters include draft text changes. There's an art to writing a rule. And doing something like this is completely voluntary – if you don't include draft text, it doesn't mean the SEC won't consider your comment letter.

6. Don't Argue About Rules Required by Legislation - If the SEC is writing a rule because Congress – by enacting legislation – directed them to do so, the SEC is required to act on that statutory directive to adopt a rule. So arguing that you disagree with the legislation is a waste of time. The SEC has no legal authority to change the statute.

7. Put Your Comments in Writing - If you get lucky and meet with someone from the SEC Staff - or meet with a SEC Commissioner - about a rulemaking, that's great. The meeting might be in person, it might be on the phone or even on a Zoom call. But your oral arguments in that meeting don't carry water unless you also reduce those arguments to writing. That's because there is a formal process mandated under the Administrative Procedure Act. It's got to be in writing, submitted in the form of a comment letter that will be posted publicly on the SEC's site along with all the other comment letters received on that rule proposal. Note that if you do meet with an SEC official, there will be a notation of that meeting posted on the SEC's site on the page where the related comment letters are posted. So be aware that it will be public knowledge who you met with, and when – and then there will be a one-sentence broad description about the topic of discussion.

8. Submit More Than One Comment Letter If You Want - Yes, you can submit more than one comment letter on a particular rule proposal. There is no cap. But to be productive, don't repeat the stuff you already included in your initial comment letter – just list the new arguments in your supplemental comment letter and reference that first letter.

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