Blogs
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Asset Management ADVocate

Details on the SEC's ESG Priorities, an Invitation to Comment, and Words of Caution

The pace of statements on ESG issues from SEC Commissioners on both sides of the political aisle shows no signs of abating. As Gary Gensler's confirmation as SEC chair nears and acting Chair Allison Herren Lee continues to highlight the SEC's prioritization of climate and other ESG matters affecting the financial markets, Commissioners Elad Roisman and Hester Pierce have voiced a need for restraint.

"A Climate for Change"

In a March 15, 2021, speech at the Center for American Progress, Commissioner Herren Lee explained that her paramount goal during her brief tenure as acting Chair has been "ensuring that the SEC is fully engaged in confronting the risks and opportunities that climate and ESG pose for investors, our financial system, and our economy." This mission, she said, is driven by investors' focus on climate and other ESG risks in their investment decision making as well as the "increasingly diminished" notion of a necessary distinction "between acting in pursuit of the public interest and acting to maximize the bottom line." Investor focus on ESG factors, Commissioner Herren Lee said, is evidenced in the substantial assets gathered by ESG funds and strategies in recent years and in asset managers' integration of ESG risks and metrics into traditional research, analysis and portfolio construction. Asset management industry players and other financial market participants, she noted, have observed the significance of ESG factors (such as human capital, human rights and climate change) in terms of "enterprise value" and have embraced them "as significant drivers in decision-making, capital allocation, and pricing." In this context, where investors are seeking more ESG data and there is evidence of majority support for most ESG-related proxy proposals, Commissioner Herren Lee stated, "climate and ESG are front and center for the SEC." Besides "ensuring accountability" through the ESG focus identified in the Division of Examination's 2021 priorities and the Division of Enforcement's new Climate and ESG Task Force, Commissioner Herren Lee said that the SEC will look holistically across all Divisions at the ways climate and ESG intersect with the regulatory framework.

- **Public Company Disclosures** — SEC staff will:
  - as suggested in the February 24, 2021, directive to the Division of Corporation Finance, seek to inform the markets with timely, material, consistent, comparable, and reliable ESG data;
  - collect input on climate change disclosure rulemaking through Commissioner Herren Lee's detailed March 15, 2021, request for public comment; and
  - work towards standardized disclosure on broader ESG topics, with possible guidance on workforce diversity metrics and political spending, as well as guidance or rulemaking on board diversity.
- **Shareholder Rights** — SEC staff will:
  - improve the shareholder proposal process, including by potentially revisiting the "mistaken" September 2020 amendments to Rule 14a-8 under the Securities Exchange Act;
  - revisit the August 2019 guidance on investment adviser proxy voting responsibilities;
  - consider updates to disclosures of fund voting decisions on Form N-PX to "maximize transparency;" and
  - consider whether the 2016 universal proxy rule proposal should be re-opened "to take into account market developments since then and move towards finalization."

- **Collaboration** — SEC staff will work towards standardization of sustainability and other ESG reporting with other financial regulators, such as the U.S. Treasury Department, and international organizations like the International Organization of Securities Commissioners and the Financial Stability Board.

Commissioner Herren Lee suggested that the SEC would also consider whether ESG-specific policies and procedures should be required, auditor attestation of voluntary sustainability reporting should be required, the Public Company Account Oversight Board should address auditors' treatment of ESG-related financial statement disclosures, and "enhanced transparency by credit rating agencies regarding how they consider ESG factors" should be considered.

"Honest Conversation" at the AMAC

Speaking at the March 19, 2021, meeting of the SEC's Asset Management Advisory Committee (AMAC), Commissioner Roisman said he believed it was "entirely reasonable" to question the SEC's authority to mandate public company disclosures on ESG topics and focused his questions in part on whether in the ESG investing rush investors understood the relationship of their ESG goals to economic risks and returns. Also speaking at the AMAC meeting, Commissioner Pierce expressed her opinion that in requiring climate and other ESG disclosures of public companies, the SEC would "have to reimagine materiality…in favor of a more malleable new edition … [that] will harm investors." Their remarks follow the letter that the U.S. Chamber of Commerce reportedly sent to the SEC on March 15, 2021, urging caution with the Climate and ESG Task Force's enforcement mission prior to the adoption of new guidance or rulemaking.

Conclusion

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