

What's the Value of a Comment Letter on a SEC Rulemaking? 6 Things to Know

With over [6000 comment letters](#) being submitted on the SEC's request for comment on a possible climate disclosure rulemaking, it might be a good time to examine whether it's worth the hassle of submitting a comment letter. Let's start with a little primer about the comment letter process. The Administrative Procedure Act requires federal agencies to allow the public to comment on rulemakings before any rules are adopted. Here's a [pretty good summary of the rulemaking process](#) from the Congressional Research Service. Although there is no particular mandate about how seriously the SEC must take comments, they do take them seriously in practice. Of course, each comment letter is not given the same weight – nor does the Staff defer to comments by the same degree for each rulemaking. Here are 6 things to know about the SEC Staff's comment evaluation process: 1. White House has a lot of clout – It doesn't happen often, but some rulemakings are steered by the staff in the White House. That kind of pressure is hard to ignore, particularly because the SEC Chair is selected by the President. 2. Congress might have some clout too – Sometimes, various members of Congress will champion a particular rulemaking – or perhaps oppose a rulemaking. Or focus on narrow elements within a rulemaking. It will depend on who those members of Congress are (do they serve on one of the committees that oversee the SEC?) – and what other factors are at play, but sometimes that pressure is enough to bear to get the SEC to do something. For example, when I was involved as a SEC Staffer in the somewhat controversial interpretive guidance for Y2K, two members of the US Senate Banking Committee were insisting that the SEC take action. And we did. 3. The SEC Chair has clout for sure – The SEC Chair controls the agency's rulemaking agenda – so the Chair arguably has more control over the formulation of a rule than all the other SEC Commissioners combined. Of course, the Chair will need support from a few of the other Commissioners to get a rule navigated through the process – so those Commissioners might be able to influence certain aspects of a rulemaking to some degree. The SEC Chair will rely heavily on a Division Director (and the rulemaking staff in that Director's Division) to come up with the specifics for a rule. So the Staff heavily influences a rulemaking too - particularly the details. The degree to which the SEC Chair and the Staff will defer to the comments received from the public will vary depending on the topic. Sometimes, the comments will matter a lot. Sometimes perhaps not as much. 4. Groups & associations matter – As could be expected, comment letters representing groups tend to carry more weight than from an individual entity or person, simply because of the weight of the number of members in the trade group. On the other hand, I should note that if a particular entity feels strongly about something, they should weigh in with their own comment letter and not rely solely on their trade group to mention it in their comment letter. It can highlight a point and the Staff will consider it. 5. But individuals matter too – It's not uncommon for the SEC Staff to grasp on to a nugget or two in a comment letter from an individual if that person has a good idea. In other words, the Staff truly will read every comment letter and is not snobbish about where an idea comes from. 6. Form letters feel redundant – It's unclear how much clout a form comment really has. At what point do the numbers matter? It's hard to tell. Will 1000 copies of the same letter carry more weight than 10? Maybe. Maybe not. How about even a million of the same form letter? Perhaps, but I'm still a little dubious. More persuasive is the actual argument being made; the solutions suggested.

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