Blogs
September 23, 2021
Public Chatter

Corp Fin Posts 9 Sample Comments on Climate Disclosure

Earlier this year, then acting SEC Chair Allison Herren Lee **directed** Corp Fin to focus on climate disclosure. We weren't sure what would be the end result of such a review. Perhaps it will lead to a comprehensive report on how companies are faring. It undoubtedly will help instruct the climate disclosure rulemaking that the Commission will be proposing in the near-term. What we do know is that the first companies are now receiving comment letters addressing climate based on recent reviews of their Form 10-Ks. And yesterday, Corp Fin posted a **sample comment letter** with 9 types of comments about climate. The sample comment letter references the **SEC's 2010 Guidance Regarding Disclosure Related to Climate Change,** and is consistent with that prior guidance, if more direct on a few points. Here are 3 things to know about that **sample comment letter**: 1. The Corp Fin Staff expects MD&A to be where most of the climate disclosure resides (including consequences of regulatory changes, business trends, and physical effects of climate change), with some mention in the Risk Factors (such as physical and transition risks), Business and Legal Proceedings sections.

---

2. Consistent with past guidance and statements from the SEC, absent any rule that specifically mentions climate change, the general open-ended disclosure requirement of "such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading" is the underlying consideration for climate disclosure.

---

3. The Corp Fin Staff is looking at disclosure provided in sustainability and ESG reports and looking for discrepancies between these disclosures and SEC filings. Here are the 9 types of comments in the sample comment letter: 1. What consideration the company gave to providing the same type of climate-related disclosure in its SEC filings as it provided in its more expansive corporate social responsibility report.

---

2. Climate-related transition risks "such as policy and regulatory changes that could impose operational and compliance burdens, market trends that may alter business opportunities, credit risks, or technological changes."

---

3. Material climate-related litigation risks.

---

4. The material effects of significant pending or existing climate change-related legislation, regulations and international accords.

---

5. Material past and/or future capital expenditures for climate-related projects.

---

6. Indirect consequences of climate-related regulation or business trends, such as decreased or increased demand for goods or services based on production or reduction of significant GHG emissions, increased competition to introduce lower-emission products, increased demand for alternative energy products, and reputational risks resulting from operations or products that produce material GHG emissions.

---

7. Material physical effects (including damage quantification) of climate change such as severe weather, changes in sea level, arability of farmland, extreme fires and water availability and quality, indirect impact of weather on major customers or suppliers, decreased agricultural production capacity and the cost or availability of insurance.

---

8. Quantification of increased climate-related compliance costs.

---

9. Material carbon credits or offsets.

Explore more in

Corporate Law
Blog series

Public Chatter

Public Chatter provides practical guidance—and the latest developments—to those grappling with public company securities law and corporate governance issues, through content developed from an in-house perspective.

View the blog