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SEC Poised to Take Action on ESG and Climate Change Issues

The United States Securities and Exchange Commission ("SEC") is poised to take action on ESG and climate change issues. The SEC this month announced that the Divisions of Corporation Finance, Examinations, and Enforcement are all undertaking climate or ESG-related initiatives.

The SEC's Division of Corporate Finance announced that it plans to focus on climate disclosure in public company filings and begin updating the SEC's 2010 *Interpretive Guidance on Disclosure Related to Business or Legal Developments Regarding Climate Change* (the "2010 Climate Change Guidance"). The SEC's 2010 Climate Change Guidance advises companies to consider the impacts of climate change legislation and regulation, the impacts of international climate change accords, the indirect consequences of climate change regulation or business trends, and the physical impacts of climate change in their risk-related disclosures.

The SEC's Division of Examinations has stated that climate and ESG-related risks will be included in its annual examination priorities. The Division is enhancing its focus on these risks by "examining proxy voting policies and practices to ensure voting aligns with investors' best interests and expectations, as well as firms' business continuity plans in light of intensifying physical risks associated with climate change." https://www.sec.gov/news/press-release/2021-39. Other priorities announced by the Division include Fintech and innovation, anti-money laundering programs, information security, conflicts of interest for brokers and investment advisors, and LIBOR transition.

Finally, the SEC announced the creation of a Climate and ESG Task Force (the "ESG Task Force") in the Commission's Division of Enforcement. Due to increasing investor focus on climate and ESG-related disclosures, the Task Force will "develop initiatives to proactively identify ESG-related misconduct." https://www.sec.gov/news/press-release/2021-42. The ESG Task Force will initially focus on material gaps or misstatements in climate change disclosures based on the 2010 Climate Change Guidance. The ESG Task Force is also charged with assessing compliance issues associated with ESG strategies. For now, these too will be assessed against the SEC's 2010 Climate Change Guidance and existing antifraud provisions.

In a signal that additional guidance or regulation is likely forthcoming, the SEC welcomed public comment on the adequacy of climate change disclosures in informing investors about unknown climate change risks, uncertainties, impacts and opportunities and whether greater consistency could be achieved. The SEC specifically requested input on issues such as whether registrants should disclose internal governance and oversight of climate-related issues, whether climate disclosure should be a component of a broader ESG disclosure framework, and whether establishing industry-specific climate change reporting standards would be productive. Previously, in December 2020, the ESG Subcommittee of the Asset Management Advisory Committee issued a preliminary recommendation that the SEC adopt standards by which corporate issuers must disclose material ESG risks. In February 2021, the Office of Investor Education and Advocacy issued an ESG Funds Investor Bulletin describing ESG funds and advising investors that because there are no definitive regulations on this topic, different funds may have different methods for defining, incorporating, and weighing environmental, social, and governance factors.

For More Information

Please contact Kristin Parker, the Chapman attorney with whom you regularly work, or visit our Social Finance and Impacting Investing resources at chapman.com.

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