2021 Marked by SEC Focus on Climate-related Disclosures

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With the third quarter coming to a close and year-end reporting just around the corner, public companies should be giving careful thought to the evolving landscape for climate-related disclosures. While it did not promulgate any new rules in 2021 regarding these disclosures, the SEC has been actively commenting on climate change disclosures, and new rules are almost certainly on the way.

Since 2010, the SEC has made clear that its existing disclosure regime requires issuers to assess and, if material, disclose the impact of and risks related to climate change and related legislative and regulatory responses. Starting in 2020 and continuing through 2021, the SEC has further emphasized that climate and other ESG-related risks are a major priority:

- In May 2020, the SEC Investor Advisory Committee recommended that the SEC begin an effort to update reporting requirements for issuers to include material ESG-related disclosures.
- In December 2020, the ESG Subcommittee of the SEC Asset Management Advisory Committee provisionally recommended that the Commission require corporate issuers to disclose material ESG risks.
- In February 2021, Acting Chair Lee directed the Division of Corporation Finance to enhance its focus on climate-related disclosure in public company filings, and the SEC Office of Investor Education and Advocacy issued an Investor Bulletin to educate investors about ESG funds.
- In March 2021, Acting Chair Lee requested public input from investors, registrants, and other market participants on climate change disclosure; the SEC Division of Examinations announced its 2021 examination priorities, which included a greater emphasis on risks posed by climate change; and the SEC announced the creation of a Climate and ESG Task Force in the Division of Enforcement to develop initiatives to identify ESG-related misconduct.
- In April 2021, the SEC Division of Examination issued a Risk Alert that noted the staff's observations regarding ESG products and services offered by investment advisers, registered investment companies and private funds.
- In September 2021, the Division of Corporation Finance published a sample comment letter to illustrate the sorts of climate-related comments a public company may expect from the SEC staff in connection with a review of its filings.

The foregoing, along with speeches made by Chair Gensler and Commissioner Lee, among others, serve as a reminder to public companies that even without additional rulemaking, the SEC is intensely focused on climate-related disclosures. As they approach the 2022 reporting season, public companies should conduct a focused review of the climate change-related risks they face, including risks posed by proposed legislative and regulatory responses to climate change, and, if material, disclose them in their SEC filings. Additionally, companies that release a corporate social responsibility (CSR) or similar report should coordinate the preparation of that report with the preparation of their SEC filings to ensure consistency between them and that all claims made in a CSR report can be supported with the same degree of confidence as statements made in an SEC filing.

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