Public Input Welcomed on Climate Change Disclosures

Acting Chair Allison Herren Lee

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In light of demand for climate change information and questions about whether current disclosures adequately inform investors, public input is requested from investors, registrants, and other market participants on climate change disclosure.

The Securities and Exchange Commission (SEC or Commission) has periodically evaluated its regulation of climate change disclosures within the context of its integrated disclosure system. In 2010, the Commission issued an interpretive release that provided guidance to issuers as to how existing disclosure requirements apply to climate change matters.[1] The 2010 Climate Change Guidance noted that, depending on the circumstances, information about climate change-related risks and opportunities might be required in a registrant's disclosures related to its description of business, legal proceedings, risk factors, and management's discussion and analysis of financial condition and results of operations. The release outlined certain ways in which climate change may trigger disclosure obligations under the SEC's rules. It noted legislation and regulations governing climate change, international accords, changes in market demand for goods or services, and physical risks associated with climate change.

Since 2010, investor demand for, and company disclosure of information about, climate change risks, impacts, and opportunities has grown dramatically.[2] Consequently, questions arise about whether climate change disclosures adequately inform investors about known material risks, uncertainties, impacts, and opportunities, and whether greater consistency could be achieved. In May 2020, the SEC Investor Advisory Committee approved recommendations urging the Commission to begin an effort to update reporting requirements for issuers to include material, decision-useful environmental, social, and governance, or ESG factors.[3] In December 2020, the ESG Subcommittee of the SEC Asset Management Advisory Committee issued a preliminary recommendation that the Commission require the adoption of standards by which corporate issuers disclose material ESG risks.[4]

I am asking the staff to evaluate our disclosure rules with an eye toward facilitating the disclosure of consistent, comparable, and reliable information on climate change. To facilitate the staff's assessment, set forth below are questions that would be useful to consider as part of this evaluation.[5] In addition, a webform and email box are now available for the public to provide input on these issues. Public input on the Commission's disclosure rules and guidance as they apply to climate change disclosures, and whether and how they should be modified, can include comments on existing disclosure requirements in Regulation S-K and Regulation S-X (or, for foreign private issuers, Form 20-F), potential new Commission disclosure requirements, and potential new disclosure frameworks that the Commission might adopt or incorporate in its disclosure rules. In addition to the questions set forth below, comments generally as to how the Commission can best regulate climate change disclosures are welcomed.[6]

I encourage commenters to submit empirical data and other information in support of their comments. Original data from respondents, including academics, data providers, and other organizations, may assist in assessing the materiality of climate-related disclosures, and the costs and benefits of different regulatory approaches to climate disclosure.

Questions for Consideration

1. How can the Commission best regulate, monitor, review, and guide climate change disclosures in order to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them? Where and how should such disclosures be provided? Should any such disclosures be included in annual reports, other periodic filings, or otherwise be furnished?
2. What information related to climate risks can be quantified and measured? How are markets currently using quantified information? Are there specific metrics on which all registrants should report (such as, for example, scopes 1, 2, and 3 greenhouse gas emissions, and greenhouse gas reduction goals)? What quantified and measured information or metrics should be disclosed because it may be material to an investment or voting decision? Should disclosures be tiered or scaled based on the size and/or type of registrant)? If so, how? Should disclosures be phased in over time? If so, how? How are markets evaluating and pricing externalities of contributions to climate change? Do climate change related impacts affect the cost of capital, and if so, how and in what ways? How have registrants or investors analyzed risks and costs associated with climate change? What are registrants doing internally to evaluate or project climate scenarios, and what information from or about such internal evaluations should be disclosed to investors to inform investment and voting decisions? How does the absence or presence of robust carbon markets impact firms' analysis of the risks and costs associated with climate change?
3. What are the advantages and disadvantages of permitting investors, registrants, and other industry participants to develop disclosure standards mutually agreed by them? Should those standards satisfy minimum disclosure requirements established by the Commission? How should such a system work? What minimum disclosure requirements should the Commission establish if it were to allow industry-led disclosure standards? What level of granularity should be used to define industries (e.g., two-digit SIC, four-digit SIC, etc.)?
4. What are the advantages and disadvantages of establishing different climate change reporting standards for different industries, such as the financial sector, oil and gas, transportation, etc.? How should any such industry-focused standards be developed and implemented?
5. What are the advantages and disadvantages of rules that incorporate or draw on existing frameworks, such as, for example, those developed by the Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB), and the Climate Disclosure Standards Board (CDSB)?[7] Are there any specific frameworks that the Commission should consider? If so, which frameworks and why?
6. How should any disclosure requirements be updated, improved, augmented, or otherwise changed over time? Should the Commission itself carry out these tasks, or should it adopt or identify criteria for identifying other organization(s) to do so? If the latter, what organization(s) should be responsible for doing so, and what role should the Commission play in governance or funding? Should the Commission designate a climate or ESG disclosure standard setter? If so, what should the characteristics of such a standard setter be? Is there an existing climate disclosure standard setter that the Commission should consider?
7. What is the best approach for requiring climate-related disclosures? For example, should any such disclosures be incorporated into existing rules such as Regulation S-K or Regulation S-X, or should a new regulation devoted entirely to climate risks, opportunities, and impacts be promulgated? Should any such disclosures be filed with or furnished to the Commission?
8. How, if at all, should registrants disclose their internal governance and oversight of climate-related issues? For example, what are the advantages and disadvantages of requiring disclosure concerning the connection between executive or employee compensation and climate change risks and impacts?
9. What are the advantages and disadvantages of developing a single set of global standards applicable to companies around the world, including registrants under the Commission's rules, versus multiple

standard setters and standards? If there were to be a single standard setter and set of standards, which one should it be? What are the advantages and disadvantages of establishing a minimum global set of standards as a baseline that individual jurisdictions could build on versus a comprehensive set of standards? If there are multiple standard setters, how can standards be aligned to enhance comparability and reliability? What should be the interaction between any global standard and Commission requirements? If the Commission were to endorse or incorporate a global standard, what are the advantages and disadvantages of having mandatory compliance?

10. How should disclosures under any such standards be enforced or assessed? For example, what are the advantages and disadvantages of making disclosures subject to audit or another form of assurance? If there is an audit or assurance process or requirement, what organization(s) should perform such tasks? What relationship should the Commission or other existing bodies have to such tasks? What assurance framework should the Commission consider requiring or permitting?
11. Should the Commission consider other measures to ensure the reliability of climate-related disclosures? Should the Commission, for example, consider whether management's annual report on internal control over financial reporting and related requirements should be updated to ensure sufficient analysis of controls around climate reporting? Should the Commission consider requiring a certification by the CEO, CFO, or other corporate officer relating to climate disclosures?
12. What are the advantages and disadvantages of a "comply or explain" framework for climate change that would permit registrants to either comply with, or if they do not comply, explain why they have not complied with the disclosure rules? How should this work? Should "comply or explain" apply to all climate change disclosures or just select ones, and why?
13. How should the Commission craft rules that elicit meaningful discussion of the registrant's views on its climate-related risks and opportunities? What are the advantages and disadvantages of requiring disclosed metrics to be accompanied with a sustainability disclosure and analysis section similar to the current Management's Discussion and Analysis of Financial Condition and Results of Operations?
14. What climate-related information is available with respect to private companies, and how should the Commission's rules address private companies' climate disclosures, such as through exempt offerings, or its oversight of certain investment advisers and funds?
15. In addition to climate-related disclosure, the staff is evaluating a range of disclosure issues under the heading of environmental, social, and governance, or ESG, matters. Should climate-related requirements be one component of a broader ESG disclosure framework? How should the Commission craft climate-related disclosure requirements that would complement a broader ESG disclosure standard? How do climate-related disclosure issues relate to the broader spectrum of ESG disclosure issues?

How to Provide Feedback

Members of the public interested in making their input known on these or other related matters are invited to submit that input via the webform or e-mail address linked below. To help the staff process and review your comments more efficiently, please use only one of these methods. To the extent that you are responding to a particular question(s) above, please identify such question(s) in your submission. **Please submit comments within 90 days of the date of this statement**.
Submissions will generally be posted on www.sec.gov. Submissions received will be posted without change or redaction of personal identifying information. You should only make submissions that you wish to make available publicly.

In addition to, or in lieu of, making a written submission, staff in the Division of Corporation Finance would be happy to meet with members of the public to discuss their feedback on these and other related matters. Please contact Kristina Wyatt, Senior Special Counsel, at (202) 551-3181.

Submit Input: Webform | E-mail

[1] Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 (Feb. 2, 2010) [75 FR 6290 (Feb 8, 2010)] (2010 Climate Change Guidance).
[2] *See, e.g*., Managing Climate Risk in the U.S. Financial System, Report of the Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission (Sept. 2020); Business Roundtable, Addressing Climate Change, Principles and Policies (Sept. 2020); Network for Greening the Financial System, The Macroeconomic and Financial Stability Impacts of Climate Change (June 2020); SEC Rulemaking Petition (June 10, 2020); BlackRock, Getting physical: Scenario analysis for assessing climate-related risks (April 4, 2019).
[3] *See* Recommendation from the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee Related to ESG Disclosure (May 14, 2020).
[4] *See* Potential Recommendations of the ESG Subcommittee of the SEC Asset Management Advisory Committee (Dec. 1, 2020).
[5] Public input has previously been sought in this manner to inform potential rule changes. *See, e.g*., Chairman Jay Clayton, Asset-Level Disclosure Requirements for Residential Mortgage-Backed Securities, Public Statement (Oct. 30, 2019).
[6] Last month, I issued a Statement on the Review of Climate-Related Disclosure directing the Division of Corporation Finance to review the extent to which public companies address the topics identified in the 2010 Climate Change Guidance and absorb lessons on how the market is currently managing climate-related risks. The staff will use insights from that work in considering updates to the 2010 Climate Change Guidance to take into account developments in the last decade. The review announced today, and the opening of the comment file, are meant to facilitate a broader evaluation of our disclosure rules as they relate to climate change, but may also inform the update of the 2010 Climate Change Guidance.
[7] This list is not meant to be exhaustive, and should also be construed to include potential successor organizations. *See, e.g.*, IIRC and SASB announce intent to merge in major step towards simplifying the corporate reporting system (Nov. 25, 2020).