Blogs
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Asset Management ADVocate

A Big Week for ESG at the SEC

Our last blog post in this ESG series discussed the February 24, 2021 Statement on the Review of Climate-Related Disclosure from Commissioner Allison Herren Lee, the SEC's Acting Chair, and the ESG Funds Investor Bulletin published by the SEC Office of Investor Education and Advocacy on February 26, 2021. Those regulatory developments were followed quickly last week by other messaging from the SEC on ESG matters.

International Collaboration

First, at a March 1, 2021, energy industry conference, Acting Chair Lee noted that the SEC is working collaboratively with the Financial Stability Board and the International Organization of Securities Commissions towards a common set of principles around which to develop a disclosure framework that allows meaningful assessment of investment risks related to sustainability generally, and climate change in particular.

Likely Rulemaking on Climate-Related Risks

Then it was widely reported on March 2, 2021, that Gary Gensler, whom President Biden has nominated to become the SEC Chair, indicated to the Senate Committee on Banking, Housing and Urban Affairs that, if confirmed, he would likely pursue rulemaking around climate risk disclosures and might also consider disclosure requirements for other ESG topics.

2021 Exams to Focus on ESG

On March 3, 2021, the SEC's Division of Examinations (formerly the Office of Compliance Inspections and Examinations) announced its 2021 priorities ("2021 Exam Priorities"), highlighting an "enhanced focus on climate-related risks." Generally, the staff says it will work to integrate climate-related and other ESG considerations into the SEC's broader regulatory framework. Examinations during the year will focus on the compliance programs of firms managing mutual funds, ETFs or private funds with ESG strategies, with an eye to:

- the consistency and adequacy of disclosures regarding ESG strategies;
- the alignment of firm ESG practices and disclosures;
- the veracity of ESG advertising; and
- the alignment of firm proxy voting with its ESG strategies.

In addition, the examinations staff will review firms' business continuity plans "in light of intensifying physical risks associated with climate change."

Climate and ESG Enforcement Task Force

On March 4, 2021, the SEC announced the formation of an Enforcement Task Force Focused on Climate and ESG Issues to be led by Kelly L. Gibson, the Acting Deputy Director of Enforcement. The Task Force is driven in part by the "increasing investor focus and reliance on climate and ESG-related disclosure and investment" identified by the staff, and will complement the SEC's other ESG initiatives, including the February 1, 2021, appointment of Satyam Khanna as the SEC's Senior Policy Advisor for Climate and ESG. Specifically, the Task Force will:

- "develop initiatives to proactively identify ESG-related misconduct;"
- use "sophisticated data analysis to mine and assess" information provided by SEC registration to identify potential violations;
- focus, at least initially, on identifying material gaps or misstatements under current law in public company climate risk disclosures;
- analyze disclosure and compliance issues relating to investment advisers' and funds' ESG strategies;
- be interdisciplinary and coordinate the efforts of the SEC's Divisions of Corporation Finance, Investment Management, and Examinations related to climate risk, sustainability, and other ESG matters; and
- accept, evaluate and pursue tips, referrals, and whistleblower complaints on ESG-related issues.

Republican Commissioners' Statement

Shortly after the Task Force announcement, SEC Commissioners Hester M. Peirce and Elad L. Roisman released a public statement questioning the purpose and propriety of the initiatives described above. Noting that the meaning of an "enhanced focus" on climate-related matters is not clear, Commissioners Peirce and Roisman questioned whether the new initiatives are, in the context of existing SEC guidance and rules, simply "a re-framing of the ongoing work" of the SEC "with a little extra fanfare." They also questioned whether the allocation of SEC resources to an ESG-focused enforcement initiative is premature.

Conclusion

The political discourse around the SEC's ESG-related activities is only likely to sharpen as the SEC pursues the initiatives it has announced and those yet to come. We may learn more later this week from the March 11, 2021, Investor Advisory Committee meeting where a recommendation regarding minority and underserved inclusion is on the agenda. A meeting of the Asset Management Advisory Committee, whose ESG Sub-Committee and Diversity & Inclusion Sub-Committee submitted recommendations for the asset management industry in last year, is also scheduled for March 19, 2021. In the longer term, the developments around public company ESG reporting stand to significantly impact asset managers' ESG data collection and analysis. In the meantime, firms should assess their compliance programs relative to the 2021 Exam Priorities and consider how their existing ESG research practices might change if public companies reported more detailed climate-related data.

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