

SEC Maintains the Status Quo on Climate Change Disclosures

January 31, 2020

Yesterday the Securities and Exchange Commission Chair Clayton and Commissioners Lee and Peirce each issued statements on climate-related disclosures in SEC filings. The statements evidence some debate within the SEC on this topic, which has attracted considerable recent attention among investors, companies and regulators. The outcome for companies is generally the status quo, as the SEC chose not to include specific requirements on climate change or other environmental, social and governance (ESG) disclosure in the amendments to MD&A it proposed yesterday.

The three statements can be found here: [Chair Clayton's statement](#); [Commissioner Lee's statement](#) and [Commissioner Peirce's statement](#).

Our alert on the MD&A amendment proposal is available [here](#). In separate action on a related topic, the SEC issued guidance about the presentation of performance metrics in MD&A; our alert on the guidance is available [here](#).

Yesterday's three statements on climate change were prompted by the concurrent proposal to amend the MD&A rules, which does not include any specific requirement to make disclosures about climate change or other ESG matters. Commissioner Lee's statement evidences some disagreement within the SEC on this approach – she argues that these topics should have been included as a way to help standardize and provide guidance to companies on the appropriate types and amount of disclosure to include on these topics, which she characterized as “what may be the single most momentous risk to face markets since the financial crisis.” And she even suggests a potential line-item disclosure approach for these topics (and possibly others), in addition to the current principles-based approach that has dominated recent rule proposals.

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However, a principles-based approach clearly won out, and Chair Clayton's statement is primarily a reminder of existing SEC guidance on the topic and reaffirms the SEC's approach to climate change disclosures as rooted in a materiality determination. He underlines the SEC's 2010 interpretative release, which provided guidance on existing disclosure requirements as they apply to climate change issues.¹ In that guidance, the SEC indicated four items of Regulation S-K that could require disclosure regarding the impact of climate change (description of business, legal proceedings, risk factors and MD&A), and provided some examples of climate change-related issues that registrants may need to consider for disclosure purposes.

Since then, the SEC staff has continued to assess these matters by engaging with investors, market participants, financial regulators and international counterparts, as well as through the review of issuer filings. In yesterday's statement, Chair Clayton reaffirms the position that a principles-based materiality standard has been and remains adequate to provide investors with the mix of information they need to make informed investment decisions.

Commissioner Peirce's statement supports this view, emphasizing the value of the materiality standard as the core disclosure focus and questioning whether ESG and sustainability disclosure truly meets that standard.

Interestingly, in his statement, Chair Clayton noted the development of recommendations for voluntary climate-related financial disclosures by the Task Force on Climate-Related Financial Disclosures (TCFD), which was recently identified by BlackRock CEO Larry Fink as the framework BlackRock will expect to see portfolio companies use to disclose climate-related risks, along with the industry-specific standards developed by the Sustainability Accounting Standards Board (SASB).²

Also of note is Chair Clayton's brief mention of the potential need for disclosure relating to the current and potential effects of the coronavirus, which the Staff will be monitoring and considering future guidance and other assistance.

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¹ Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 (Feb. 2, 2010) [75 FR 6290 (Feb. 8, 2010)].

² Letter from Larry Fink, Chairman & CEO, BlackRock to CEOs (Jan. 14, 2020), <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>.