

Climate Change – Will the SEC Revamp Its Disclosure Requirements?

Climate change, global warming and similar subjects are the daily grist of the news. The Washington Post reported recently, for example, that huge quantities of ice are melting at an alarming rate. The newly installed Biden administration has made the environment and global warming a central issue, moving almost immediately to get the U.S. back into the Paris Agreement. The SEC, the premier U.S. disclosure agency in the view of many, has disclosure provisions tracing to 2010 that are at best minimalist. Although it just concluded an aggressive rule writing campaign which included provisions of Regulation S-K that govern the 2010 rules, no significant changes were made. Is it time for the agency to address the issue?

The Acting Chair of the Commission, and at least one Commissioner, seem to think so. Acting Chair Allison Herman Lee and Commissioner Caroline A. Crenshaw have addressed the question and called for better disclosure standards ([here](#)). None have been adopted.

Shortly before Chair Lee and Commissioner Crenshaw made their statements, the CFTC published a report prepared by the Climate-Related Market Risk Subcommittee on September 9, 2020 ([here](#)). The Report contained a number of important conclusions. Those included the fact that: Climate change could pose systemic risk to the U.S. financial system; and regulators should be concerned about the risks of climate-related shocks. Perhaps most importantly, the Report concluded that disclosure by corporations of information on material climate related financial risks is essential, although existing disclosure requirements have not resulted in sufficient information to be useful to market participants and regulators.

At the beginning of 2020 the SEC undertook a rule making initiative to modernize Regulation S-K which governs the Commission's disclosure standards on climate and a series of subjects. As the rule making initiative was launched Ms. Lee noted that "investors are overwhelmingly telling us, through comment letters and petitions for rulemaking, that they need consistent, reliable, and comparable disclosures of the risks

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and opportunities related to sustainability measures, particularly climate risk.” Investors have been clear that this information is material to their decision-making process, and a growing body of research confirms that. And MD&A is uniquely suited to disclosures related to climate risk; it provides a lens through which investors can assess the perspective of the stewards of their investment capital on this complex and critical issue.

Previously, the agency has reached out and explored the questions relating to the environment. In 2016 a Regulation S-K Concept Release was issued. It posed questions regarding sustainability reporting. While the agency did not follow-up, the private sector did. BlackRock, for example, issued a letter that discussed climate-related issues in April 2019.

Just days before the Commission issued the Regulation S-K amendments initiated in January 2020, Ms. Lee, speaking at a PLI conference noted that investors, asset managers, lenders, credit rating agencies and others use climate data and information when investing billions of dollars. This, she noted, “requires uniform, consistent, and reliable disclosure ([here](#)).” Yet when the final amendments to S-K were issued, the rule failed to address climate risk, “similar to other recent modernization rulemakings . . .” according to the now Acting Chair.

Comment

It is time for the Commission to step-up. The agency has had at least a decade to augment its initial entry into the area. It accumulated valuable information four years ago with its concept release. The agency has had the benefit of the CFTC report and the prodding of its Acting Chair and a Commissioner. There is no doubt that investors are considering climate information. If the agency wants to remain the premier disclosure agency it is time to act.