

Governance and Disclosure Considerations from the SEC's Climate Change Comment Letters

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The SEC's Division of Corporation Finance has issued [a sample comment letter](#), and sent actual comment letters to a series of public companies, asking for additional Form 10-K disclosure on topics addressed in the SEC's [2010 Guidance Regarding Disclosure Related to Climate Change](#), Release No. 33-9106 (Feb. 2, 2010), or an explanation for why the comments do not apply. The comment letters are a preamble to the SEC's rulemaking, which is now expected early in 2022.

In his recent remarks on mandatory climate change disclosure, SEC Chairman Gary Gensler noted that investor demand is driving SEC rulemaking: "Investors today are asking for that ability to compare companies with each other. Generally, I believe it's with mandatory disclosures that investors can benefit from that consistency and comparability. When disclosures remain voluntary, it can lead to a wide range of inconsistent disclosures."

SEC Comment Letters

In its comment letters, the SEC has suggested that it will continue to monitor climate change disclosure beyond SEC filings. Companies are asked to explain what consideration was given to providing the same type of climate-related disclosure in SEC filings as was provided in more expansive disclosure in corporate social responsibility (CSR) reports. This comment prompts companies to evaluate the consistency of their disclosure across multiple platforms. Specifically, companies may re-consider whether and when to use the term "material," and what it means in an SEC filing versus a CSR report or a website. When used to qualify a requirement for the furnishing of information in a registered securities offering, the SEC definition of "materiality" limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered.

Furthermore, the comments request Management's Discussion & Analysis disclosure, to

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the extent material, of:

- the effect of pending or existing climate-change legislation and international accords on the business, financial condition and results of operations,
- capital expenditures for climate-related projects,
- indirect consequences of regulations or business trends, such as changes in demand for goods or services based on carbon emissions,
- weather-related and other physical effects of climate change on operations and results, and
- quantification of increased compliance costs related to climate change.

Companies have also been asked to add or update material risk factors related to climate change, including potentially:

- transition risks related to climate change that may affect the business, financial condition and results of operations, such as policy and regulatory changes that could impose operational and compliance burdens, market trends that may alter business opportunities, credit risks or technological changes, and
- litigation risks related to climate change and the potential impact on the company.

More information on governance and disclosure considerations from the SEC's Climate Change Comment Letters can be found [here](#).