

SEC Enforcement's New Climate Task Force

Environmental issues; climate change; and environmental, social and governance issues or ESG. These issues are all the talk, at least since the Biden administration came to Washington and took over. The SEC, which has not updated its environmental disclosure requirements in a decade, suddenly cannot get enough.

Now the agency has a senior staff position dedicated to the environment. The Acting Chair directed the Division of Corporation Finance to review the out of date Commission disclosure standards. And, the Division of Enforcement entered the fray with a press release on March 4, 2021 announcing a new task force lead by the Division's Acting Deputy Director named the Climate and ESG Task Force.

So what will Enforcement and its new task force do for the agency in the area of the environment? Three things. First, it will "identify any material gaps or misstatements in issuers' disclosure of climate risks under existing rules." That should not take long since the disclosure standards are largely ineffective.

Second, the "new enforcement group will analyze disclosure and compliance issues relating to investment advisers' and funds' ESG strategies," according to the release. This could be an important function. Many funds have or are implementing climate related policies, investment strategies and approaches. Blackstone is, for example, a leader in this area.

Third, the "climate and ESG Task Force will evaluate and pursue tips, referrals, and whistleblower complaints on ESG related issues, and provide expertise and insight to teams working on ESG-related matters across the Division." While this sounds like a potentially significant task, its actual meaning is at best elusive.

The hope here, however, is that all of these actions amount to more than what Commissioners Hester Peirce and Eland Roisman suggest in their comments published the same day as the Enforcement Release. While the two Commissioners express agreement with the new environmental – climate approach adopted recently by the

Related Capabilities

- Securities & Financial Services Litigation & Enforcement
- Environmental, Social, Governance (ESG)

agency, their view seems to be that moving forward little should be expected beyond what is currently happening: “we assume that the new initiative is simply a continuation of the work the staff has been doing for more than a decade . . .”

If the upshot of these initiatives is more of the same, the SEC would do better to just stop. World securities regulators are moving quickly to create the disclosure requirement necessary to effectively inform investors and the markets about the efforts of corporations, investment advisers, funds and others in the area of climate change and ESG as has been repeatedly recounted in articles in this space. Here is hoping that by the time of the U.N. Summit on these issues in the fall the Commission has decided to become a leader and not a follower in this critical area.