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BLOG

SEC Chair Directs Mandatory Climate Risk Disclosures

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On July 28, 2021, Securities and Exchange Commission (SEC) Chair Gary Gensler delivered prepared remarks before the Principles for Responsible Investment "Climate and Global Financial Markets" webinar where he directed "SEC staff to develop a mandatory climate risk disclosure rule proposal for the [SEC's] consideration by the end of the year."

Chair Gensler believes the required disclosures should be consistent and comparable and asked the staff to consider whether mandatory climate risk disclosures should be included regularly in annual reports on Form 10-K.

In addition, Chair Gensler believes the disclosures should be "decision-useful," providing sufficient detail so investors can gain useful information. He asked the staff to "consider a variety of qualitative and quantitative information about climate risk that investors either currently rely on, or believe would help them make investment decisions." Qualitative disclosures would include describing how the company's leadership manages climate-related risks and opportunities and how such factors influence company strategy. Quantitative disclosures would include metrics related to greenhouse gas emissions, financial impacts of climate change, and progress towards climate-related goals. The SEC staff was also instructed to consider industry-specific metrics and evaluate the data and criteria currently used by asset managers as the basis for marketing products and services as "green," "sustainable," "low-carbon," and similar labels.

Of particular note within quantitative disclosures, Chair Gensler endorsed Scope 1 (emissions from a company's operations) and Scope 2 (use of electricity and similar resources) greenhouse gas emissions disclosures. He directed staff to make recommendations about how companies might disclose their Scope 1 and Scope 2 emissions and also the circumstances within which a company might need to disclose Scope 3 emissions (all other indirect emissions that occur in a company's value chain).

The investing public has taken an interest in these disclosures; as Chair Gensler pointed out, the SEC has received more than 550 comment letters since public input on climate change disclosures was requested by the SEC last March, with three out of every four support mandatory climate disclosure rules. While there has been an increase in interest in climate-related and ESG disclosures from public companies, it is uncertain what shape these disclosures should take, including, "which measurements are necessary to help investors gauge a company's financial prospects, and how to set requirements that are flexible enough to generate specific, and not generic, information about corporate risks."

Capital Markets & Securities Law Watch will continue to monitor developments in this area and will provide our readers with updates.
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