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BLOG

SEC Chairman Tweets About Coming Climate Risk Disclosures

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The Securities and Exchange Commission is working on new regulations. These would mandate climate-related and other Environmental, Social, and Governance disclosures.[1] Onlookers still don't know when they'll see a proposed rule from the SEC. However, Chairman Gensler recently tweeted clues on what regulated entities should expect.

On February 11, 2022, Gary Gensler, chairman of the SEC, took to Twitter. In bursts of 280 characters or less, Gensler commented on why "the SEC is looking at climate risk disclosure."[2] His latest public statements give some insights into what may be included in the SEC's new regulations.

First, Gensler said that climate disclosures are needed for investors. "Investors representing trillions of dollars are looking for more consistent, comparable, & decision-useful info about the climate risk of companies in which they invest."[3] As evidenced by recent reports and greenwashing litigation, in addition to investors, activists and academics are very interested in climate disclosure requirements and are already closely scrutinizing what companies are voluntarily disclosing.[4]

Second, Gensler suggested that climate risk disclosures will be popular with more than just investors. He pointed to the comments the SEC received in response to last year's request for public comments on what might be a part of a proposed SEC rule. Gensler stated that "3 out of the 4 comments we received supported mandatory climate risk disclosure rules."[5] One such letter was from a dozen state attorneys general—led by California and New York—that called on the SEC to mandate broad ESG[6] disclosures for climate-related financial risks.[7]

Then Gensler provided an overview of what he believes the SEC's disclosures "should" look like:

- They "should be consistent & comparable. Like the Olympics, fans compare skiers across heats, countries, & generations. Investors today are asking for the ability to compare companies w/ each other."
- The SEC "should consider whether these disclosures should be filed in the Form 10-K, living alongside other info that investors use to make their investment decisions."
- "Disclosures should provide sufficient quantitative & qualitative detail so investors can gain helpful info. Generic boilerplate text doesn't help investors."[8]

After outlining what he believes should be addressed by these disclosures, Gensler said he "believe[s] mandatory climate risk disclosure would represent significant progress, requiring companies to assess climate risks & collect & publicly disclose relevant metrics for the first time & giving investor info they've needed for years."[9] He concluded that it is "essential we get this right."[10]

Chairman Gensler did not tip when a proposed rule on climate-related financial risk would be released. The proposed rule was originally slated for October 2021, but the SEC has been tight-lipped of late. Even once released, any such rule proposal would need to undergo a period of public comment. Therefore, it is increasingly likely that actual reporting requirements under the new rules would not begin to take effect until 2023. Then, once the final rules are promulgated, it is likely that legal challenges will follow.[11] These could take added time to work through the federal courts.

For further information or answers to questions on ESG disclosures, and their implications, contact Jonathan D. Brightbill (Partner, White Collar, Regulatory Defense, and Investigations, Environmental Litigation) or Jennie Roualet (Associate, White Collar, Regulatory Defense, and Investigations).

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[1] Off. of Info. & Regul. Affs. Off. of Mgmt. & Budget, SEC Climate Change Disclosure (June 17, 2021), https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.

[2] *Gary Gensler*, Twitter (Feb. 11, 2022) ("Gensler Tweet"), https://twitter.com/GaryGensler/status/1492269191021436928.

[3] *Id.*

[4] Jonathan Brightbill & Jennifer Roualet, *Activists Increasing Scrutiny of Net-Zero Climate Pledges and Alleged "Greenwashing"* (Feb. 15, 2022), https://www.winston.com/en/winston-and-the-legal-environment/activists-increasing-scrutiny-of-net-zero-climate-pledges-and-alleged-greenwashing.html.

[5] *Id.*

[6] Environmental, social, and governance.

[7] Jonathan Brightbill & Jennifer Roualet, *State Regulators Press for Broad ESG Disclosures on Climate-Related Financial Risk* (June 21, 2022), https://www.winston.com/en/winston-and-the-legal-environment/state-regulators-press-for-broad-esg-disclosures-on-climate-related-financial-risk.html.

[8] Gensler Tweet.

[9] *Id.*

[10] *Id.*

[11] Jonathan Brightbill & Jennifer Roualet, *Evaluating Challenges to SEC's ESG Disclosure Proposal*, Law360 (Aug. 23, 2021), https://www.law360.com/articles/1414167/evaluating-challenges-to-sec-s-esg-disclosure-proposal.

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