

New SEC Task Force Confirms Commitment to ESG Focus

Update

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A series of recent announcements by the SEC underscores the agency's commitment—and allocation of resources—to its heightened focus on environmental, social and governance (“ESG”) issues. Significantly, on March 4, 2021, the SEC announced the creation of a Climate and ESG Task Force in the Division of Enforcement.¹ As discussed in a [prior alert](#), companies should be prepared for greater scrutiny of their disclosures concerning ESG, as well as related litigation, and these recent developments reinforce that analysis.

The Climate and ESG Task Force, led by Kelly L. Gibson, the SEC's Acting Deputy Director of Enforcement, will focus on identifying “material gaps or misstatements in issuers’ disclosures of climate risks under existing rules,” examining “disclosure and compliance issues related to investment advisers’ and funds’ ESG strategies,” and evaluating whistleblower complaints related to ESG issues. Acting Deputy Director Gibson said in a statement that the new Task Force would further the agency's goal of “[p]roactively addressing emerging disclosure gaps that threaten investors and the market.”

The creation of the Climate and ESG Task Force follows similar recent announcements from the SEC that emphasize ESG as a priority. For example, on February 24, 2021, Acting SEC Chair Allison Herren Lee directed the Division of Corporate Finance to focus on climate-related disclosures in public company filings.² Consistent with that direction, the SEC announced its intention to review companies’ compliance with guidance the SEC issued in 2010 concerning climate-related disclosures, as well as to update and modernize that 2010 guidance “to take into account developments in the last decade.” In issuing the directive, Acting Chair Lee acknowledged that, “[n]ow more than ever, investors are considering climate-related issues when making their investment decisions” and recognized the public interest in “consistent, comparable, and reliable climate-related disclosures.”

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Additionally, on March 3, 2021, the SEC's Division of Examinations announced its 2021 examination priorities, which further confirmed the SEC's enhanced focus on ESG.³ Noting that investment advisors are "increasingly offering investment strategies that focus on ESG factors," the Division announced that it would be scrutinizing the consistency and adequacy of the disclosures made by investment advisors and funds to clients seeking ESG-related investment strategies. In a statement accompanying the announcement, Acting Chair Lee explained: "This year, the Division is enhancing its focus on climate and ESG-related risks by examining proxy voting policies and practices to ensure voting aligns with investors' best interests and expectations, as well as firms' business continuity plans in light of intensifying physical risks associated with climate change."

Litigation

Notably, Gary Gensler, President Biden's nominee for SEC Chair, has offered additional clues as to the direction of the SEC's enforcement efforts. During a nomination hearing before the Senate Committee on Banking, Housing, and Urban Affairs on March 2, 2021, Gensler signaled that he would likely maintain the SEC's recently-announced focus on ESG-related disclosures. Gensler testified that "there's tens of trillions of dollars of invested assets that are looking for more information about climate risk," adding that "the SEC has a role to play to bring some consistency and comparability to [ESG disclosure] guidelines." The Senate is expected to confirm Gensler as the SEC Chair.

There are numerous steps companies and financial institutions can take to ensure they are prepared for the new initiatives and heightened scrutiny from both regulators and investors. Bracewell has a multi-disciplinary team focused on ESG issues. We advise and support our clients drawing on our expertise in environmental strategies, securities matters, regulatory issues, government enforcement, commercial litigation, and crisis management, and we are at the forefront of the transition to sustainable energy. Please contact your Bracewell team member for more information.

¹ <https://www.sec.gov/news/press-release/2021-42>

² <https://www.sec.gov/news/public-statement/lee-statement-review-climate-related-disclosure>

³ <https://www.sec.gov/news/press-release/2021-39>