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SEC Releases Sample Comment Letter on Climate-Related Disclosures

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On September 22, 2021, the U.S. Securities and Exchange Commission (the "SEC") issued a Sample Letter to Companies Regarding Climate Change Disclosures (the "Sample Letter").¹ In response to investors' demands, the SEC has placed a spotlight on climate-related disclosure matters, and the Sample Letter is further indication that the staff is carefully evaluating registrants' filings for discussion of material climate-related matters.

Background

In the SEC's March 3, 2021 release of its 2021 Examination Priorities, the SEC highlighted its intention to place an enhanced focus on climate-related risks.² A day later, the SEC announced the formation of a Climate and ESG Task Force in the Division of Enforcement, with a stated focus on identifying "material gaps or misstatements in issuers' disclosure of climate risks under existing rules."³ Later in the month, acting Chair (now Commissioner) Allison Herren Lee called for public input on climate change disclosures to assist in facilitating the staff's evaluation of current disclosure rules related to climate change. Ms. Lee asked specific questions, including how the SEC could best regulate and monitor climate change disclosure, what risks could reasonably be quantified and measured, and how such risks could be compared among issuers.⁴ In June 2021, the press release announcing the SEC's Annual Regulatory Agenda stated that climate risk ranked as a "notable"⁵ SEC rulemaking area, with a Notice of Proposed Rulemaking anticipated to be released around October 2021.⁶

Sample Letter

The guidance accompanying the Sample Letter reminds registrants that compliance with existing securities laws may require disclosure regarding climate risks and highlighted the following Items of Regulation S-K that could call for such disclosure:

- Item 101 – Description of the Business;
- Item 103 – Legal Proceedings;
- Item 105 – Risk Factors; and
- Item 303 – Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A").

The SEC also pointed out that, in addition to compliance with these specific items of Regulation S-K, as required by registrants' periodic filings or registration statements, registrants must also provide "such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."⁷

The Sample Letter includes example comments that the SEC may issue to registrants related to such registrants' climate-related disclosures or lack thereof. While the sample comments are not comprehensive, they can help guide registrants as they craft their disclosure in upcoming filings with the SEC. The comments are grouped into three segments: general comments, comments related to registrants' risk factors, and comments related to registrants' MD&A.

General Comments

The Sample Letter indicates that the SEC may review a registrant's corporate social responsibility report (a "CSR Report") and compare it to the disclosures provided in the registrant's SEC filings. To the extent there is more expansive disclosure in the CSR Report, the SEC may inquire as to why a registrant neglected to include the same level of climate-related disclosures in its SEC filings.

Risk Factors

The Sample Letter highlights the fact that the SEC expects registrants to provide disclosure about material impacts of climate change on the business, financial condition, and results of operations of the registrant, 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. Additionally, the SEC may ask registrants to disclose material litigation risks related to climate change and their potential impact to the registrant.

MD&A

The majority of the comments included in the Sample Letter fall under comments related to a registrant's MD&A. There were a wide range of comments inquiring as to the impact of various climate-related matters, including federal and state legislative developments, the purchase or sale of carbon credits or offsets, and capital expenditures stemming from climate-related regulations and international accords. For example, one comment asks the registrant to "discuss the physical effects of climate change on your operations and results," if material, and includes suggested topics of disclosure, such as weather severity, how weather has impacted customers or suppliers, or the cost of insurance and changes to agricultural production related to drought. Another asks the registrant to quantify increases in the registrant's compliance costs caused by climate change, if material.⁸

As registrants prepare for upcoming periodic filings or contemplate disclosure updates in the context of securities offerings, they should anticipate that the SEC expects more detailed disclosures about climate change and should prepare to address any SEC comments in advance.

We are carefully tracking the SEC's updates on climate change disclosures and rulemaking. To the extent you have questions on the impact of the Sample Letter or the SEC's approach, please contact us. The full text of the Sample Letter is accessible [here](#).



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¹ Sample Letter to Companies Regarding Climate Change Disclosures, (Sept. 22, 2021) <https://www.sec.gov/corpfin/sample-letter-climate-change-disclosures>.

² SEC Division of Examinations Announces 2021 Examination Priorities, (March 3, 2021) <https://www.sec.gov/news/press-release/2021-39>.

³ SEC Announces Enforcement Task Force Focused on Climate and ESG Issues, (March 4, 2021) <https://www.sec.gov/news/press-release/2021-42>.

⁴ Public Input Welcomed on Climate Change Disclosures, (March 15, 2021) <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.

⁵ SEC Announces Annual Regulatory Agenda, (June 11, 2021) <https://www.sec.gov/news/press-release/2021-99>.

⁶ See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM87>.

⁷ Sample Letter to Companies Regarding Climate Change Disclosures, (Sept. 22, 2021) <https://www.sec.gov/corpfin/sample-letter-climate-change-disclosures>.

⁸ Sample Letter to Companies Regarding Climate Change Disclosures, (Sept. 22, 2021) <https://www.sec.gov/corpfin/sample-letter-climate-change-disclosures>.

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