



SEC to Review Public-Company Climate-Change Disclosures

Published February 26, 2021

Acting SEC Chair Allison Herren Lee issued a February 24 statement directing the Commission Staff to review public-company climate-change-related disclosures. The staff will assess current disclosures in light of the SEC's prior 2010 guidance and "update" that guidance.

The prior guidance did not mandate specific climate disclosures but instead focused on how climate-change issues might affect existing disclosure obligations regarding, for example, material legal compliance or litigation issues, material risks, and the effect of known trends, developments, or a company's operational environment.

The move is part of the Biden Administration's increased focus on climate issues and follows the SEC's appointment earlier this month of Satyam Khanna as Senior Policy Advisor for Climate and ESG in Acting Chair Lee's office.

On February 25, Reuters reported that Acting Chair Lee also suggested the Commission should consider requiring diversity and inclusion disclosures from regulated entities. Read the article [here](#).

We should hope the announcement does not portend a return to enforcement-by-guidance in which federal agencies try to create new obligations through informal policy statements that avoid notice-and-comment rulemaking. The Administrative Conference of the United States has criticized rulemaking by agency fiat in the guise of guidance. See Recommendation 2019-1, 84 Fed. Reg. 38927. The US Department of Justice has prohibited prosecutions based on informal agency guidance. See 28 C.F.R. § 50.26, 85 Fed. Reg. 50951 (July 24, 2020) (codifying the Nov. 17, 2017 Sessions Memo and Jan. 25, 2018, Brand Memo).

The SEC's 2010 Guidance, Rel. Nos. 33-9106, 34-6149 (Feb. 8, 2010) is [here](#).

Acting Chair Lee's statement is [here](#).

Author



Thomas K. Potter III

Partner

Nashville, TN

Burr & Forman publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm. If legal advice is sought, no representation is made about the quality of the legal services to be performed or the expertise of the lawyers performing such service.