Climate Gets Heated at the SEC

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On March 4, Acting Chair Allison Herren Lee announced the creation of a “Climate and ESG Task Force” of 22 members from across the Enforcement Division:

Consistent with increasing investor focus and reliance on climate and ESG-related disclosure and investment, the Climate and ESG Task Force will develop initiatives to proactively identify ESG-related misconduct. The task force will also coordinate the effective use of Division resources, including through the use of sophisticated data analysis to mine and assess information across registrants, to identify potential violations.

The move is another, seemingly unilateral, move by the Acting Chair to amp up the SEC’s climate and ESG posture, consistent with the Biden Administration’s policy priorities. It follows the February 1 appointment of a Senior Policy Advisor for Climate and ESG in the Acting Chair’s office and a February 24 statement directing Corporate Finance to focus on issuer’s climate-related disclosures. I wrote on that here.

Earlier this week, the Division of Examinations announced its 2021 exam priorities also would address climate and ESG issues:

> “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,” said Acting Chair Allison Herren Lee. “Through these and other efforts, we are integrating climate and ESG considerations into the agency’s broader regulatory framework.” SEC Press Release No. 2021-39.

You can read that blog post here. And speaking at the CERAWeek conference just days before, Acting Chair Lee said she wanted the SEC to take the lead on implementing a global set of standards for climate disclosures.

Commissioners Roisman and Peirce (Republican appointees) responded with their own statement, all but calling these moves "virtue signaling" on climate:

What does this "enhanced focus" on climate-related matters mean? The short answer is: it's not yet clear. Do these announcements represent a change from current Commission practices or a continuation of the status quo with a new public relations twist? Time will tell.

Their statement points out that the SEC's climate-disclosure guidance has been in place for a decade and that the Commission has not adopted any new standards; moreover, they say, misleading statements about anything – including climate and ESG – always have been a core concern for the SEC.

[W]e assume that the new initiative is simply a *continuation* of the work the staff has been doing for more than a decade and not a program to assess public filers' disclosure against any *new* standards or expectations. After all, the Commission has not voted on any new standards or expectations relating to climate-related disclosure. The timing of this release—just before many public companies were due to file their annual reports—underscores its apparent function as a re-framing of the ongoing work, rather than the announcement of anything new.

They concluded with a shot across the bow at any inclination to adopt new standards in the guise of "guidance:"

But then maybe the Enforcement Division is merely continuing ongoing efforts with a little extra fanfare. Either way, we must continue to review any alleged securities violations in light of the regulations and guidance *in existence* at the time of the conduct in question.

Roisman's and Peirce's Statement is here.

Roisman and Peirce also "dissented" from Acting Chair Lee's decision to return to separate tracks for enforcement settlements and waivers of disqualifications. You can read that statement here.

The "Climate Task Force" Press Release 2021-42 (March 4, 2021) is here.

Thomas K. Potter, III (tpotter@burr.com) is a partner in the Securities Litigation Practice Group at Burr & Forman, LLP. Tom is licensed in Tennessee, Texas, and Louisiana. He has over 34 years of experience representing financial institutions in litigation, regulatory, and compliance matters. See attorney profile.

Author

Thomas K. Potter III

Partner
Nashville, TN