

SEC Takes ESG Disclosure Plunge: An Ocean of Issues Swirls

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It comes as no surprise that the SEC has placed environmental, social, and governance matters on its regulatory calendar, even though the SEC says it's doing so for the "first time."

An SEC announcement of Chair Gary Gensler's rulemaking agenda states that the Division of Investment Management "is considering recommending that the Commission propose requirements for investment companies and investment advisers related to environmental, social and governance (ESG) factors, including ESG claims and related disclosures."

The announcement also states that the Division of Corporation Finance "is considering recommending that the Commission propose rule amendments to enhance registrant disclosures regarding issuers' climate-related risks and opportunities" and "human capital management."

The SEC has been busy receiving input and recommendations from at least five separate in-house sources: the Investor Advocate, the Investor Advisory Committee, the Asset Management Advisory Committee, the Climate and ESG Task Force in the Division of Enforcement, and the [senior policy adviser for climate and ESG](#).

Moreover, in response to an invitation from then-acting Chair Allison Herren Lee, the SEC has received 5,781 written comments, including submissions from the Investment Company Institute and the American Council of Life Insurers. Individual commissioners or staff members have met with 50 organizations.

The SEC's Investor Advocate has reported to Congress that there are two problems with how the traditional materiality test for ESG disclosure is functioning. First, "information provided by

companies tends to vary in quality, and it is not presented in a standard format that enables comparisons between companies.”

Second, disclosure may not reveal the practice of “greenwashing,” which is “the practice of making misleading claims regarding companies’ or funds’ ESG credentials in order to draw the interest of investors who place value in ESG matters.”

Gensler has explained that he’s looking for rules that will assure “truth in advertising.” He says that he wants more transparency and comparability where there is “currently a huge range of what asset managers might mean by certain terms or what criteria they use” in terms of claiming “sustainability- related investing.” He also says that the rules governing fund names focus on “investment types, as distinguished from investment strategies” and asks “whether that distinction ... is still relevant today.”

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