Published on *The National Law Review* https://natlawreview.com

How Will the SEC Drive ESG Progress? First, We Measure

Article By:

Erika K. Powers

Richard E. Glaze Jr.

Remarks by U.S. Securities and Exchange Commission Chair Gary Gensler indicate that the SEC may soon respond to increasing demand from investors for information on how to better evaluate a firm's environmental, social, and governance (ESG) risks. The SEC is considering a number of changes in how such risks are measured, as a first step toward driving progress.

Gensler provided a broad outline of the rule revisions he has asked SEC staff to consider in his remarks before the Principles for Responsible Investment "Climate and Global Financial Markets" webinar on July 28, and before the Asset Management Advisory Committee on July 7.

First, Gensler emphasized widespread investor support for increased transparency, indicating that the SEC would respond with a proposed mandatory climate risk disclosure rule by the end of 2021. Such a rule might require consistent and comparable climate risk disclosures, add ESG disclosure requirements to Form 10-K, and use or adapt available third-party metrics such as those included in the Task Force on Climate-related Financial Disclosures framework and the industry-specific SASB standards of the newly named Value Reporting Foundation.

A new mandatory climate risk disclosure rule may also require more qualitative and quantitative information to ensure that disclosures support informed investment decisions, such as:

- How ESG issues are managed and incorporated into a company's strategy
- Greenhouse gas emissions from operations, energy use, and downstream value chain
- Financial impacts of climate change on the company
- Progress toward climate-related company goals, such as "net zero" or other emission reduction goals
- Industry-specific metrics, such as for the banking, insurance, or transportation industries
- Strategies for likely future ESG-related requirements, such as those arising from the Paris Agreement or federal regulatory action

The SEC chair also has asked his staff to consider revisions to the Names Rule, which might require disclosure of specific criteria and data underlying claims that a particular fund is “sustainable,” “green,” or “low-carbon,” for example.

Gensler has asked SEC staff to consider increasing transparency around diversity and inclusion in the asset management industry, as well. These efforts could, for example, require disclosure of employee and owner demographics, as well as diversity and inclusion practices. The SEC chair clearly views such enhanced measurement efforts as a driver for change, particularly when considering “how the workforce in the asset management industry can better represent the great diversity of our nation.”

Still, there are a number of questions Gensler left unanswered for the moment.

- When will the measurement and disclosure requirements become effective, and will there be sufficient time to prepare for the new obligations?
- Must future disclosures be filed in annual and quarterly reports, provided in separate reports to the SEC, or published outside of the SEC reporting framework?
- Will the content be confined to objectively verifiable quantitative information such as stage 1, 2, and 3 carbon emissions data, or also include subjective, or “qualitative,” conclusions about company operations?

Regulated companies will undoubtedly have disparate views on these and other issues, and should consider taking full advantage of opportunities to comment on upcoming rules that might change how ESG risks are measured.

National Law Review, Volume XI, Number 215