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Acting SEC Chair Lee Discusses Additional Climate and ESG Initiatives

This client alert, part of a series focused on ESG disclosure and regulatory developments, should be read together with our ESG Lexicon, available [here](#), which provides definitions of some of the key terms used in ESG reports, disclosures and regulations.

On March 15, 2021, Acting SEC Chair Allison Herren Lee delivered a speech at a briefing hosted by the Center for American Progress (remarks, available [here](#)). Building on the recent climate disclosure directive issued to the Division of Corporation Finance on February 24, the Division of Examination's March 3 announcement of its enhanced focus on climate and ESG in 2021, and the launch of an SEC climate and ESG enforcement task force on March 4,¹ Acting Chair Lee identified additional areas where the SEC's regulatory mission intersects with climate and ESG issues, and the associated initiatives that she has directed the SEC to undertake. These initiatives, if implemented, would have significant impact not only on climate and ESG topics, but also on the rules governing shareholder proposals and "proxy plumbing".

Separately, Acting Chair Lee issued a statement on March 15 calling for public comment on climate disclosures (available [here](#)). The statement poses a number of questions for public input on a wide range of topics, including how should the SEC consider updating its climate disclosure requirements, how companies should make these disclosures, and what should the SEC require companies to disclose (e.g., which data and metrics are most useful from a disclosure perspective, whether climate change reporting standards should vary by industry or country, etc.).

With the confirmation of Gary Gensler, President Biden's SEC Chair nominee, expected imminently, we can only speculate as to the next steps, but it is clear that we can expect more to come from the SEC on climate and ESG.

We highlight certain of the key themes cited by Acting Chair Lee in her remarks.

- ▶ **Priorities:** Acting Chair Lee began her speech by stating that "no single issue has been more pressing for me than ensuring that the SEC is fully engaged in confronting the risks and opportunities that climate and ESG pose for investors, our financial system, and our economy." She observed that the shift in investor focus on analysis and use

¹ See our prior client alerts, [Acting SEC Chair Allison Herren Lee Issues Statement on the Review of Climate-related Disclosure](#), and [SEC Turns Up The Heat on Climate and ESG Disclosures](#).

of climate and ESG risks and impacts in investment decision-making is unprecedented. Today, she continued, the “distinction between what’s ‘good’ and what’s profitable, between what’s sustainable environmentally and what’s sustainable economically, between acting in pursuit of the public interest and acting to maximize the bottom line—is increasingly diminished.” Climate and ESG are now priorities for the SEC because they are understood as important to markets and investors, as demonstrated by shifts towards sustainable investments, investor demands for ESG disclosures and corporate recognition of consumer and investor awareness of the responses of the business community.

Acting Chair Lee called for a unified approach to addressing climate and ESG issues that transcends “artificial distinctions” between society and financial markets, as well as geographical boundaries (suggesting the need for global solutions to global challenges that impact global markets), regulatory boundaries (potentially presaging turf battles among federal agencies) and boundaries within the SEC (noting efforts across offices and divisions to address the myriad ways climate and ESG intersect with its regulatory mandate).

- ▶ **Climate disclosures:** Acting Chair Lee noted her call for public comments and the directive issued to the staff of the Division of Corporation Finance to enhance its focus on climate-related disclosures as critical steps towards the development of a climate disclosure regime.
- ▶ **Bolstering the ESG disclosure framework:** In addition to the goal of developing a comprehensive standardized climate and ESG disclosure framework, Acting Chair Lee identified specific near-term standalone goals, such as issuing guidance on human capital disclosure (to encourage the reporting of specific metrics like workforce diversity) and guidance and possible rule-making on board diversity. Noting that the SEC is currently prohibited from finalizing rule-making on disclosures of political contributions, contributions to tax-exempt organizations and dues paid to trade associations, Acting Chair Lee identified such disclosures as worthy of attention and key to any discussion of sustainability.
- ▶ **Shareholder proposals:** Stressing the importance of shareholder proposals in allowing investors to bring climate and ESG issues to companies, and with a view to increasing “the number of proposals on corporate ballots that are well-designed for shareholder deliberation and votes,” Acting Chair Lee has asked the SEC staff to consider proposals for revising existing SEC or staff guidance on the no-action process and for revising Rule 14a-8 itself. She noted specifically that these proposals could include reversing some of the 2020 amendments to Rule 14a-8 that she opposed, such as those preventing shareholders from aggregating their holdings for purposes of meeting the necessary shareholding thresholds to submit a proposal, and preventing individuals and representatives from submitting more than one proposal at any given meeting. This could also involve reaffirming that shareholder proposals cannot be excluded if they concern socially significant issues, such as climate change, because they could be viewed as involving the company’s “ordinary business”.
- ▶ **Proxy Voting:**
 - *Re-visiting SEC guidance on proxy voting responsibilities of investment advisers:* Acting Chair Lee has asked the staff to review the 2019 proxy voting guidance with a view to supplementing or replacing it, due to her concerns that it may discourage fiduciaries from voting in certain circumstances.
 - *Updating fund voting disclosures:* To maximize transparency around fund proxy voting, Acting Chair Lee has requested that the staff consider updates to disclosures of fund voting decisions.

- *Finalizing a universal proxy rule:* Acting Chair Lee has asked the staff to consider whether to once again take up the universal proxy rule and finalize it.
- ▶ **Sustainability Standard Setters:** Acting Chair Lee noted her support for IOSCO's recent statement regarding the creation of an international Sustainability Standards Board. Domestically, the issue of how to craft and administer a flexible climate and ESG disclosure framework remains a challenging question for the SEC. Acting Chair Lee stated that the SEC should consider the development of a dedicated standard setter under SEC oversight to devise an ESG reporting framework that could complement the SEC's existing financial reporting framework. It is noteworthy that Acting Chair Lee acknowledges the importance of broad collaboration domestically and internationally to address global issues.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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