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# SEC Division of Corporation Finance Publishes Sample Climate Disclosure Comments

The Staff of the SEC Division of Corporation Finance has issued a sample comment letter (available [here](#)) reflecting comments on climate disclosure that the Staff may issue when reviewing companies' public filings. The issuance of these comments reflects the SEC's increased scrutiny of climate disclosures, and follows the call by then Acting Chair Allison Herren Lee in February 2021 for the Staff of the Division of Corporation Finance to "enhance its focus on climate-related disclosure in public company filings," and the establishment, in March 2021, of the Climate and ESG Task Force in the SEC's Division of Enforcement, whose preliminary focus is to "identify any material gaps or misstatements in issuers' disclosure of climate risks under existing rules." Chair Gary Gensler has called on the SEC to develop mandatory climate disclosure requirements to provide investors with "consistent, comparable and decision-useful" disclosure, which the SEC is expected to propose this fall.

The sample comments refer to the SEC's 2010 guidance on climate disclosures (available [here](#)) and request additional disclosure, where material, in the risk factors and MD&A sections. In addition, the sample comments indicate that the SEC will be reviewing the disclosures provided by companies in their social responsibility/sustainability reports and comparing those to the SEC filing disclosures. Where there are discrepancies, companies may be asked to explain what consideration they gave to providing the same type of climate-related disclosures in their SEC filings as were provided in their social responsibility/sustainability reports.

Below is a summary of the Staff sample risk factors and MD&A comments. Even if they have not received a comment directly, companies should consider this guidance and the materiality of any such climate-related disclosures when preparing their periodic reports.

## Risk Factors

- disclose the material effects of transition risks related to climate change that may affect the business, financial condition and results of operations (for example, policy and regulatory changes that could impose operational and compliance burdens, market trends that may alter business opportunities, credit risks or technological changes).
- disclose any material litigation risks related to climate change and explain the potential impact to the company.

## MD&A

- identify material pending or existing climate change-related legislation, regulations and international accords, and describe any material effect on the business, financial condition and results of operations.
- identify and quantify any material past and/or future capital expenditures for climate-related projects.
- to the extent material, discuss the indirect consequences of climate-related regulation or business trends, such as:

- decreased demand for goods or services that produce significant greenhouse gas emissions or are related to carbon-based energy sources;
  - increased demand for goods that result in lower emissions than competing products;
  - increased competition to develop innovative new products that result in lower emissions;
  - increased demand for generation and transmission of energy from alternative energy sources; and
  - any anticipated reputational risks resulting from operations or products that produce material greenhouse gas emissions.
- if material, discuss the physical effects of climate change on operations and results, such as:
    - severity of weather, such as floods, hurricanes, sea levels, arability of farmland, extreme fires, and water availability and quality;
    - quantification of material weather-related damages to property or operations;
    - potential for indirect weather-related impacts that have affected or may affect major customers or suppliers;
    - decreased agricultural production capacity in areas affected by drought or other weather-related changes; and
    - any weather-related impacts on the cost or availability of insurance.
  - quantify any material increased compliance costs related to climate change.
  - to the extent material, provide disclosure about the purchase or sale of carbon credits or offsets and any material effects on the business, financial condition and results of operations.

The sample climate disclosure comments reflect an increased focus and expectation from the SEC on the quality and content of climate-related corporate disclosure expected in filings. Companies that previously limited substantive climate-related disclosure to social responsibility/ sustainability reports should now consider the guidance of these SEC comments when preparing their public filings.

\* \* \*

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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