



## SEC Set the Stage for Potential ESG Reporting Requirements

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The 2010 guidance summarized a number of SEC rules and regulations with the potential to be a source of disclosure obligations for public companies regarding climate change, including:

- Disclosure regarding certain costs of complying with environmental laws (then under Regulation S-K Item 101(c)(1)(xii), now covered in Item 101(c)(2)(i))
- Disclosure of certain environmental litigation (under Regulation S-K Item 103)
- Disclosure of risk factors (then under Regulation S-K Item 503(c), now covered in Item 105)
- Management's Discussion and Analysis disclosures (under Regulation S-K Item 303).

When determining what climate-related disclosures they may have to make, the 2010 guidance urged companies to consider:

- The potential impact of domestic legislation and regulation
- International accords
- Indirect consequences of regulation or business trends
- Physical impacts of climate change.

While it is not yet apparent what changes will be made to the 2010 guidance or existing regulations, Lee's statement suggests that she considers updated guidance to be an "immediate"—and perhaps just the first—step to eventual climate and other environmental, social and corporate governance (ESG) disclosure requirements. Indeed, President Biden promised during his campaign to require public reporting companies to "disclose climate risk and the greenhouse gas emissions in their operations and supply chains." Mandatory ESG

reporting requirements may therefore be on the agenda for President Biden’s SEC chair nominee Gary Gensler, whose nomination we discussed further [here](#), and the SEC’s new Senior Policy Advisor for Climate and ESG, Satyam Khanna, who [we expect](#) to work closely with Gensler, Lee and others at the SEC to implement President Biden’s promise. Accordingly, companies should remain vigilant for changes to their disclosure requirements as the SEC enhances its focus on climate-related issues. In the meantime, directors and officers may consider taking a step back to assess where their companies stand with regard to ESG issues and disclosure and to prepare for a future likely to bring greater scrutiny.

For greater detail on ESG issues that boards of directors should consider at this time, please see Akin Gump’s [Top 10 Topics for Directors in 2021](#).

## Categories

Corporate Governance

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Climate Change

Policy

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