



Corp Fin's Climate Disclosure Review is Here – What to Expect and How to Prepare

Sep 30, 2021

Reading Time : **5 min**

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Below we provide further background, a summary of the types of comments that a company may anticipate receiving and some key takeaways.

Background

In 2010, the SEC published an interpretive release (the [2010 Climate Change Guidance](#)), which requires companies to consider in disclosures “the impact of pending or existing climate-change related legislation, regulations, and international accords; the indirect consequences of regulation or business trends; and the physical impacts of climate change.” Since 2010, the SEC had remained largely silent on climate change until this year, when it began to release a number of statements on, and take several notable actions related to, climate change disclosures and climate risks.

In February, then-Acting Chair Allison Herren Lee [directed](#) Corp Fin to review the extent to which public companies have addressed the topics identified in the 2010 Climate Change Guidance. The climate-related disclosure comments published last week, as well as the actual letters that have been issued to companies, are a result of this review.

In March, the SEC [requested comment](#) on 15 questions related to the SEC’s regulation of climate change disclosures. Requests for input included, among others: the appropriate approach to regulating climate disclosure; the use of third-party reporting frameworks; the degree to which registrants can measure climate risk; how the commission should enforce disclosures; and whether the SEC should institute a broader environment, social and governance (ESG) disclosure framework. In a recent [speech](#), Chair Gary Gensler asserted that investors increasingly want to understand public companies’ climate risks and are looking for

consistent, comparable and decision-useful disclosures to help them invest in companies that fit their needs. Supporting this claim, Chair Gensler cited the more than 550 unique comment letters that have been submitted in response to the request for public comment on climate change disclosures, of which three out of every four letters support some level of mandatory climate change disclosure rules.

Sample Comments

Depending on the particular facts and circumstances, information related to climate change-related risks and opportunities may be required in various disclosure items in a company's SEC filings (e.g., the description of business, legal proceedings, risk factors and management's discussion and analysis (MD&A) of financial condition and results of operations). The sample comments, grouped into three disclosure categories, are summarized below.

General

- Provide the considerations given to including the same type of climate-related disclosure in your SEC filings as your corporate social responsibility (CSR) report.

Risk Factors

- Disclose the material effects of climate change transition risks that may affect your business, financial condition and results of operations.
- Disclose any material litigation risks related to climate change and explain the potential impact to the company.

MD&A

- Revise your disclosure to identify material pending or existing climate change-related legislation, regulations and international accords, and describe any material effect on your business, financial condition and results of operations.
- Revise your disclosure to identify and, if material, quantify any material past and/or future capital expenditures for climate-related projects.
- If material, discuss the indirect consequences of climate-related regulation or business trends.
- If material, discuss the physical effects of climate change on your operations and results.
- Quantify any material increased compliance costs related to climate change.

- If material, provide disclosure about your purchase or sale of carbon credits or offsets and any material effects on your business, financial condition and results of operations.

What to Expect

The Corp Fin disclosure review, together with the input elicited from the request for comment, is expected to formulate an update to the 2010 Climate Change Guidance. However, a number of technical, pragmatic and even fundamental questions remain. Such questions include, among others:

- Will the new disclosures be incorporated into existing rules such as Regulation S-K or Regulation S-X, or created as part of a new regulation devoted entirely to climate risks?
- Should the rules incorporate or draw on existing frameworks, such as those developed by the Task Force on Climate-Related Financial Disclosures (TCFD) or the Sustainability Accounting Standards Board (SASB)?
- What information related to climate risks can be quantified and measured and how do you create a set of metrics applicable across industries?
- Does the SEC have Congressional authority to regulate, through disclosure, climate-related issues?

While the proposing release for such rulemaking was forecast to be published by October of this year, given the timing of the Corp Fin comment letters and the volume of comments received in response to the SEC's request for comment, Chair Gensler has recently signaled a delay of the proposing release and it appears nearly certain that it will not be published before December. As such, the proposing release is unlikely to impact Form 10-K disclosure (for calendar year-end issuers).

How to Prepare

Because some form of climate-related rulemaking is forthcoming, it is likely that many companies will want to be constructive to the process as the SEC gathers facts and evaluates the responses to any climate-related comments. However, considering that many companies do not currently consider climate-related issues quantitatively, or even qualitatively, *material* (under the SEC's historical formulation of such term), it appears unlikely that many companies will volunteer much information in the comment letter process that does not meet such threshold.

Nevertheless, given that both the SEC and investing public are focused on climate-related issues, companies can take a proactive approach to avoiding future climate-related comment letters or shareholder proposals. Below are a few suggestions for consideration:

CSR report review

- Ensure that there are no inconsistencies between disclosures in your CSR report and any of your SEC reports.
- Confirm that there are no statements, forecasts or commitments contained in your CSR report that are materially false or misleading.
- Memorialize internal processes and procedures that are used to prepare your CSR report and consider whether such processes and procedures are consistent with existing disclosure controls.
- Include appropriately tailored forward-looking statement disclaimers.
- Include definitions or footnotes to describe any assumptions or exclusions to the data provided.

Form 10-K review

- Revisit your regulatory and legal proceedings discussions (where relevant) and risk factors and consider if any such disclosures need to be updated given the increased focus on, and regulatory action related to, climate change.
- Review and align your risk factors and forward-looking statement disclaimers related to any additional disclosure.
- Consider whether any of your CSR report disclosures warrant inclusion in your Form 10-K, even if not quantitatively or qualitatively material, based on the fact that climate change is increasingly important to many investors.
- Absent the provision of any CSR report disclosures, consider providing a discussion of the consideration the company gives to climate-related issues, including known trends.

We will continue to monitor these developments closely and publish follow-up information and analyses when warranted.

Categories

Corporate Governance

Environment

Climate Change

Policy

North America

Environmental, Social and Governance (ESG)

Sustainable Finance

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