

## US POLICY BRIEFING: SEC REQUESTS COMMENTS ON CLIMATE CHANGE DISCLOSURE

On March 15, the Acting Chair of the Securities and Exchange Commission, Allison Herren Lee, [issued a statement](#) requesting public comment on climate change disclosures by June 14, 2021. The Acting Chair acknowledged the lack of consistent and comparable climate change information for investors under existing SEC regulations and provided a list of questions for market participants to answer to help inform SEC staff in reviewing existing disclosure rules for climate change information.

The PRI encourages signatories to:

- submit comments on climate and ESG data disclosure to the Commission, and
- sign the PRI's letter supporting standardized, mandatory disclosure of ESG data and encouraging the SEC to build a mandatory corporate reporting regime for ESG information, available on the [Collaboration Platform](#).

### BACKGROUND

The Commission has maintained guidance on required disclosure of material environmental issues since the 1970s.<sup>1</sup> As those issues have evolved, so has the Commission's guidance. The Commission issued Guidance Regarding Disclosure Related to Climate Change in 2010 ('Guidance'),<sup>2</sup> with little impact. It argued that climate change may pose material risks and opportunities that should be disclosed by companies, which can include physical effects of climate change as well as regulatory risks and opportunities. The Guidance includes a list of different ways that climate change could be material; for example, new U.S. climate regulation, new international accords and agreements on climate change, changes in demand for goods and services based on climate related trends and innovation, and changes in weather patterns.<sup>3</sup> However, the Guidance has not resulted in a noticeable improvement in the quality or quantity of issuer disclosure.

In 2016, as part of the Disclosure Effectiveness Initiative, the SEC sought to update disclosure requirements. The Commission issued a Concept Release seeking public comment on efforts to modernize disclosure requirements, including a provision on ESG factors, under Regulation S-K, which sets out annual financial reporting requirements for public companies. The Concept Release and public comment solicitation did not lead to further action by the SEC to advance ESG disclosure.

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<sup>1</sup> Release No. 33-5170 (July 19, 1971) [36 FR 13989]

<sup>2</sup> Securities and Exchange Commission, Guidance Regarding Disclosure Related to Climate Change, available at: <https://www.sec.gov/rules/interp/2010/33-9106.pdf>

<sup>3</sup> Securities and Exchange Commission, 2010 Climate Guidance, available at: <https://www.sec.gov/rules/interp/2010/33-9106.pdf>.

In 2018, investors and associated organizations, including the PRI, petitioned the SEC to develop a mandatory ESG disclosure framework.<sup>4</sup> In the same year, the Government Accountability Office (GAO) issued a report on climate-related disclosure at the Commission, and found that the impact of the 2010 Guidance has been limited.<sup>5</sup> In addition, the GAO found that companies are not required to explain how they determined which information is material. Furthermore, the Commission does not have the authority to subpoena companies' disclosure information, which makes it difficult to determine whether any material information was not disclosed. In May 2020, the SEC Investor Advisory Committee recommended that the SEC update its disclosure requirements to include material ESG disclosure.<sup>6</sup> With the change in administration this year, the Commission turned its attention to ESG disclosure, with formal actions expected in the future.<sup>7</sup>

## REQUEST FOR COMMENT

The request for comment lists questions related to climate change disclosure, including questions regarding the type of information and metrics that should be disclosed, sector specific disclosures, information on existing voluntary frameworks and enforcement. The comments provided will be evaluated by SEC staff to assess how to facilitate disclosure of reliable and comparable climate information.<sup>8</sup> This is not a proposed rulemaking – a request for comment requests information and data from market participants on a specific topic – but the information provided in response could be used as the basis for a proposed rulemaking in the near future.

## NEXT STEPS

We recommend PRI signatories:

- Prepare to respond to the request for comment no later than the deadline of **June 14, 2021**.
- Sign onto PRI's letter, available on the [Collaboration Platform](#).
- Comments can be submitted electronically through the SEC's [webform](#) or via email at [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

For questions and comments on this briefing, please email [policy@unpri.org](mailto:policy@unpri.org) and to Colleen Orr, Senior Policy Analyst, at [colleen.orr@unpri.org](mailto:colleen.orr@unpri.org).

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4 Cynthia A. Williams and Jill E. Fisch, Request for rulemaking on environmental, social and governance (ESG) disclosures, available at: <https://www.sec.gov/rules/petitions/2018/petn4-730.pdf>.

5 GAO-13-188, Climate-related Risks: SEC Has Taken Steps to Clarify Disclosure Requirements, <https://www.gao.gov/assets/700/690197.pdf>.

6 SEC, Recommendations of the SEC Investor Advisory Committee Relating to ESG Disclosure, available at: <https://www.sec.gov/spotlight/investor-advisory-committee-2012/esg-disclosure.pdf>.

7 Acting Chair Lee directed the Division of Corporation Finance to focus on climate related financial disclosure and to update the 2010 Guidance Regarding Disclosure Related to Climate Change, available at: <https://www.sec.gov/news/public-statement/lee-statement-review-climate-related-disclosure>. The Division of Examinations announced its 2021 examination priorities, which include a clear ESG disclosure focus, available at: <https://www.sec.gov/news/press-release/2021-39>.

8 SEC, Acting Chair Lee Public Statement on Climate Change Disclosures, available at: <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.