

# New SEC Guidance on Climate Change

September 29, 2021

In recent years, there has been increased attention to ESG (Environment, Social Impact and Governance) issues, particularly environmental and sustainability issues related to climate change. In 2010, the SEC issued interpretative guidance regarding disclosure related to climate change, which is still relevant today.<sup>1</sup> Earlier this year, the SEC announced the formation of an Enforcement Division task force on climate change and issued a press release regarding its examination priorities that included a greater focus on climate-related risks.<sup>2</sup>

In furtherance of this focus on ESG and climate change, the SEC's Division of Corporation Finance has just issued new climate change guidance. The guidance consists of a sample letter outlining comments related to climate change disclosure, which the division staff likely would issue to a public company after reviewing its SEC filings.<sup>3</sup> The comments in the sample letter provide public companies valuable insight into the information that the SEC would consider relevant when evaluating climate-related disclosure in SEC filings, such as periodic reports under the Securities Exchange Act of 1934 and registration statements under the Securities Act of 1933.

In view of the sample comments, it seems likely the principal information that the Division of Corporation Finance would expect in a company's SEC filings includes the following:

- an explanation of the differences between the company's SEC filings and its Corporate Social Responsibility or ESG report,
- identification of any recent or pending federal and state legislation or international accords regarding climate change having a material effect on the company's business,
- disclosure of any transition risks related to climate change that could affect the company's business,
- disclosure of any litigation related to climate change that may impact the company,
- disclosure of past or future capital expenditures for climate-related projects,
- discussion of indirect changes in business trends caused by climate change (e.g. an increase in demand for goods that result in lower emissions),
- disclosure of the physical effects of climate change on the company's business,
- quantification of material increases in compliance costs related to climate change and
- disclosure of any purchase of carbon credits or offsets.

Although the comments in the sample letter highlight key points that public reporting companies should consider in producing disclosure, the list is not exhaustive. It is important to note that comments that the Division of Corporation Finance issues are likely to be specific to the particular company being reviewed.

It also seems very likely, given the recent change in the White House and in SEC leadership, that the SEC and other regulators soon will be adopting additional rules and regulations, including new disclosure obligations, related to climate change.

For now, companies should consider this latest SEC guidance while making climate change disclosures in advance of the adoption of any new rules or regulations. As always, companies also should assess their climate change disclosures in light of the SEC's 2010 Climate Change Guidance.

---

<sup>1</sup> Commission Guidance Regarding Disclosure Related to Climate Change, Rel. No. 33-9,106 (Feb. 2, 2010) [75 FR 6290] (Feb. 8, 2010) ("2010 Climate Change Guidance").

<sup>2</sup> <https://www.sec.gov/news/press-release/2021-39>

<sup>3</sup> [https://www.sec.gov/corpin/sample-letter-climate-change-disclosures#\\_ftn2](https://www.sec.gov/corpin/sample-letter-climate-change-disclosures#_ftn2)

## Your Key Contacts



**Walter Van Dorn**

Partner, New York

D +1 212 768 6985

[walter.vandorn@dentons.com](mailto:walter.vandorn@dentons.com)



**Matthew H. Clark**

Shareholder, Pittsburgh

D +1 412 297 4606

[matthew.clark@dentons.com](mailto:matthew.clark@dentons.com)



**Gail A. Lione**

Senior Counsel,

Washington, DC

D +1 202 496 7287

[gail.lione@dentons.com](mailto:gail.lione@dentons.com)



**Dwayne B. Latimore**

Associate, New York

D +1 212 768 6728

[dwayne.latimore@dentons.com](mailto:dwayne.latimore@dentons.com)