

MEMO# 33180

March 12, 2021

SEC Division of Corporation Finance Acting Director Coates Speech on ESG Disclosure

[33180]

March 12, 2021 TO: ICI Members

ESG Advisory Group

ESG Task Force SUBJECTS: Disclosure

ESG RE: SEC Division of Corporation Finance Acting Director Coates Speech on ESG Disclosure

Mr. John Coates spoke today at the Annual Tulane Corporate Law Institute, highlighting some of the issues that he believes “policymakers should consider as the debate over ESG disclosures continues.”[\[1\]](#) He commented on considerations for an effective ESG disclosure system, costs of no ESG disclosure requirements, mandatory versus voluntary disclosure, and the virtues of achieving a single global system. We summarize his remarks immediately below.

Considerations for an Effective ESG Disclosure System

Coates remarked that the SEC should help lead the creation of an effective ESG disclosure system so companies can provide investors with information they need in a cost-effective manner. It should be based on consensus among investors and companies about useful, reliable and comparable disclosures under standards flexible enough to remain relevant. A process to create such standards is not likely to be simple, quick or easy. Important and challenging questions must be addressed as part of the process creating such standards, including:

- What disclosures are most useful?
- What is the right balance between principles and metrics?
- How much standardization can be achieved across industries?
- How and when should standards evolve?
- What is the best way to verify or provide assurance about disclosures?
- Where and how should disclosures be globally comparable?
- Where and how can disclosures be aligned with information companies already use to make decisions?

Costs of No ESG Disclosure Requirements

Coates also pointed out that investments are being held back because of the “lack of consistent, comparable, and reliable ESG information available upon which to make informed investment and voting decisions.” He also noted that, companies “face higher costs in responding to investor demand for ESG information because there is no consensus ESG disclosure system.”

Mandatory vs. Voluntary

Coates stated that the SEC’s disclosure regime is nuanced and that “there is no reason an ESG disclosure system would need to be less nuanced.” He went on to remark that there are mandatory ESG disclosure requirements (e.g., disclosure of how a company’s board considers diversity in identifying director nominees) and that companies only are required to respond to a variety of “mandatory” requirements if they are material. Finally, companies generally are mandated to make disclosures as needed to prevent other disclosures from being materially misleading. Coates provided as an example that:

As companies continue to disclose more in sustainability reports, they should already be evaluating those disclosures in light of existing anti-fraud obligations. The SEC is well equipped to lead and facilitate a discussion on when and how ESG risks and data must be disclosed, and how to create and maintain an effective ESG-disclosure system that would promote the disclosure of decision-useful, reliable and, where appropriate, globally comparable ESG information.

The Virtues of Achieving a Single Global ESG Reporting Framework

With respect to developing a single global ESG reporting framework, Coates stated that:

ESG issues are global issues. ESG problems are global problems that need global solutions for our global markets. It would be unhelpful for multiple standards to apply to the same risks faced by the same companies that happen to raise capital or operate in multiple markets. In this regard, the work of the IFRS Foundation to establish a sustainability standards board appears promising.

He then went on to acknowledge that funding, governance and public accountability are all critical elements of a reliable, trusted disclosure system and that the SEC “can and should play a leading role in the development of a baseline global framework that each jurisdiction can build upon to address its individual needs.”

Dorothy M. Donohue
Deputy General Counsel - Securities Regulation

endnotes

[\[1\]](#) John Coates, Acting Director, Division of Corporation Finance, SEC, *ESG Disclosure – Keeping Pace with Developments Affecting Investors, Public Companies and the Capital Markets*, Statement Published in Connection with Remarks at the 33rd Annual Tulane Corporate Law Institute (March 11, 2021), *available at*

https://www.sec.gov/news/public-statement/coates-esg-disclosure-keeping-pace-031121?utm_medium=email&utm_source=govdelivery.

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