MEMO# 33170

March 9, 2021

SEC ESG Updates: Enforcement Task Force, Examination Priorities, and Commissioners' Statement

[33170]

March 9, 2021 TO: ICI Members
Accounting/Treasurers Committee
ESG Advisory Group
ESG Task Force
SEC Rules Committee SUBJECTS: Disclosure
ESG RE: SEC ESG Updates: Enforcement Task Force, Examination Priorities, and Commissioners' Statement

Last week, the SEC announced the formation of a Climate and ESG Task Force within the Division of Enforcement[1] and the publication of the Division of Examinations' 2021 examination priorities.[2] In addition, Commissioners Peirce and Roisman issued a statement with their observations about the SEC's recent enhanced climate change efforts. Each of these developments is summarized below.

Enforcement Climate and ESG Task Force

The SEC stated that, "[c]onsistent with increasing investor focus and reliance on climate and ESG-related disclosure and investment, the Climate and ESG Task Force will develop initiatives to proactively identify ESG-related misconduct." The task force will also coordinate the effective use of Division resources, "including through the use of sophisticated data analysis to mine and assess information across registrants, to identify potential violations."

The SEC stated that the initial focus of the task force will be to "identify any material gaps or misstatements in issuers' disclosure of climate risks under existing rules." The task force "will also analyze disclosure and compliance issues relating to investment advisers' and funds' ESG strategies."

In addition, the task force will evaluate and pursue tips, referrals, and whistleblower complaints on ESG-related issues, and provide expertise and insight to teams working on ESG-related matters across the Division.

2021 Examination Priorities

The SEC's press release announcing the Division of Examinations' examination priorities stated that the priorities include "a greater focus on climate-related risks." Acting Chair Allison Herren Lee stated that "[t]his year, the Division is enhancing its focus on climate and ESG-related risks by examining proxy voting policies and practices to ensure voting aligns with investors' best interests and expectations, as well as firms' business continuity plans in light of intensifying physical risks associated with climate change."

The Division of Examinations' report[3] indicates that ESG will be a focus in adviser exams, stating:

> Due to investor demand, RIAs are increasingly offering investment strategies that focus on sustainability. These strategies may include products and services that are referred to by a variety of terms such as sustainable, socially responsible, impact, and ESG conscious. The Division will focus on products in these areas that are widely available to investors such as open-end funds and ETFs, as well as those offered to accredited investors such as qualified opportunity funds. The Division will review the consistency and adequacy of the disclosures RIAs and fund complexes provide to clients regarding these strategies, determine whether the firms' processes and practices match their disclosures, review fund advertising for false or misleading statements, and review proxy voting policies and procedures and votes to assess whether they align with the strategies.

It also states that climate risk considerations will be included in their review of operational resiliency, stating:

> In light of substantial disruptions to normal business operations in the past year, the Division will again be reviewing registrants' business continuity and disaster recovery plans. Building on the efforts noted above concerning our business continuity plan outreach related to the pandemic, the Division will shift its focus to whether such plans, particularly those of systemically important registrants, account for the growing physical and other relevant risks associated with climate change. The scope of these examinations will be similar to the post-Hurricane Sandy work of the Division and other regulators, with a heightened focus on the maturation and improvements to these plans over the intervening years. As climate-related events become more frequent and more intense, we will review whether systemically important registrants are considering effective practices to help improve responses to large-scale events.

Peirce and Roisman Statement. In a March 4 statement, Commissioners Peirce and Roisman issued a statement[4] commenting on the recent SEC announcements relating to climate risk, including Acting Chair Lee's February 24 statement on the review of operating company climate-related disclosures[5] and the enforcement and examination announcements referenced above.

They stated that it is not clear what this enhanced focus on climate-related matters means and provided observations about the three actions. Regarding the climate-related disclosure initiative, they stated that they "assume that the new initiative is simply a *continuation* of the work the staff has been doing for more than a decade and not a program to assess public filers' disclosure against any new standards or expectations."

They questioned the purpose of forming an enforcement task force and whether it wouldn't be more prudent for the SEC to await the results of the climate change-related disclosure review and the examinations staff's climate- or ESG-related findings in this new exam cycle before allocating resources to an ESG-*specific* enforcement initiative.

In addition, they noted that the press release announcing the examination priorities included an introduction about how this year's priorities have an "enhanced focus" on climate and ESG-related risks but that the examination priorities themselves refer only briefly to climate and ESG-related risks and do not contain any discussion of a thematic climate focus.

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endnotes

[1] *See SEC Announces Enforcement Task Force Focused on Climate and ESG Issues*, Press Release, US Securities and Exchange Commission (March 4, 2021), *available at* https://www.sec.gov/news/press-release/2021-42?utm_medium=email&utm_source=govdelivery.

[2] *See SEC Division of Examinations Announces 2021 Examination Priorities*, Press Release, US Securities and Exchange Commission (March 3, 2021), *available at* https://www.sec.gov/news/press-release/2021-39.

[3] *See 2021 Examination Priorities,* Division of Examinations, US Securities and Exchange Commission (March 3, 2021), *available at* https://www.sec.gov/files/2021-exam-priorities.pdf. An ICI memorandum summarizing the report is *available at* https://www.ici.org/my_ici/memorandum/ci.memo33158.idc

[4] *See* Statement of Commissioners Peirce and Roisman, *Enhancing Focus on the SEC's Enhanced Climate Change Efforts*, *available at* https://www.sec.gov/news/public-statement/roisman-peirce-sec-focus-climate-change?utm_medium=email&utm_source=govdelivery.

[5] *See* ICI Memorandum No. 33131 (February 24, 2021), *available at* https://www.ici.org/my_ici/memorandum/memo33131.
