

MEMO# 33196

March 15, 2021

SEC Acting Chair Lee Speech on Climate and ESG Disclosure

[33196]

March 15, 2021 TO: ICI Members
Accounting/Treasurers Committee
ESG Advisory Group
ESG Task Force
SEC Rules Committee SUBJECTS: Disclosure
ESG RE: SEC Acting Chair Lee Speech on Climate and ESG Disclosure

On March 15, 2021, SEC Acting Chair Allison Herren Lee gave a speech outlining the SEC's activities regarding climate and ESG, including in the areas of disclosure, shareholder proposals and proxy voting, examinations and enforcement, and regulatory cooperation.[\[1\]](#) She also mentioned potential next steps with respect to ESG funds, auditing of ESG information, and credit ratings agencies.

Climate and ESG Disclosure

Chair Lee stated that investors are demanding more and better information on climate and ESG, and that demand is not being met by the current voluntary framework. That is why, she said, the SEC has begun to take critical steps toward a comprehensive ESG disclosure framework aimed at producing the consistent, comparable, and reliable data that investors need. Those steps include:

- i. asking Division of Corporation Finance staff to enhance their focus on climate-related disclosures and consider a potential update to the 2010 climate disclosure guidance;[\[2\]](#)
- ii. requesting public input on climate disclosure;[\[3\]](#) and
- iii. considering a broader array of ESG disclosure issues, beyond climate, such as human capital and political spending.

Shareholder Proposals and Proxy Voting

Regarding shareholder proposals, Chair Lee stated that she has asked the staff to develop proposals for revising Commission or staff guidance on the no-action process, and potentially revising Rule 14a-8 itself. The goal is to bring greater clarity to the no-action relief process, increase the number of proposals on the ballot that are well-designed for shareholder deliberation and votes, and reduce the number that are not. She said that this could mean reversing last year's "mistaken decision" to bar proponents from working

together and restricting their ability to act through experienced agents and could reaffirm that proposals cannot be excluded if they concern socially significant issues, such as climate change, just because they may include components that could otherwise be viewed as “ordinary business.”

Regarding proxy voting, she has asked the staff to consider recommendations for enhancing, supplementing, or replacing August 2019 guidance^[4] discouraging fiduciaries from voting in certain circumstances to ensure that advisers understand how to weigh competing concerns of all types in deciding whether and how to cast votes on behalf of their clients.

She also has asked the staff to consider updates to disclosures of fund voting decisions – which are filed on Form N-PX – to maximize transparency around fund proxy voting. She stated that “there is much room for improvement, including, for example, potentially greater standardization in these disclosures, structuring and tagging of the data, and more clarity and consistency in the description of ballot issues.”

She also has asked the staff to consider whether to recommend that the Commission reopen the comment file on the 2016 universal proxy rule proposal to take into account market developments since then and move towards finalization.

Examinations and Enforcement

Chair Lee stated that the Division of Examinations’ priorities include an enhanced focus on climate and ESG, including by examining ESG fund proxy voting policies and practices to ensure alignment with investors’ best interests and expectations, as well as examining firms’ business continuity plans in light of intensifying physical and other relevant risks associated with climate change. She also stated that the Division of Enforcement’s Climate and ESG Task Force—announced two weeks ago—will work to proactively detect climate and ESG-related misconduct, including identifying any material gaps or misstatements in issuers’ disclosure of climate risks under existing rules and analyzing disclosure and compliance issues relating to investment advisers’ and funds’ ESG strategies.^[5]

Regulatory Cooperation

Chair Lee highlighted the importance of engagement and cooperation on these issues and is committed to close regulatory cooperation, both domestically with Treasury and other financial regulators, and internationally through bilateral cooperation and through supporting the important multilateral work being done through IOSCO and the FSB. She stated that she is pleased to support IOSCO’s recent statement regarding the creation of a Sustainability Standards Board,^[6] which, she said, represents a promising approach toward the development of an international baseline for sustainability reporting upon which individual jurisdictions could build consistent with their own unique consideration.

Regarding a domestic approach, she stated that one potential path is the development of a dedicated standard setter for ESG (similar to FASB) under SEC oversight to devise an ESG reporting framework that would complement the SEC’s financial reporting framework.

Potential Next Steps: ESG Funds, Auditing of ESG Information, and Credit Ratings Agencies

She indicated among other topics for the SEC to consider are ESG funds. She noted that the SEC recently issued an investor bulletin to help investors understand the different potential ESG strategies funds may pursue^[7] and that they are working towards enhanced

transparency around proxy voting. She said the SEC should consider additional steps such as, for example, an ESG-specific policies and procedures requirement.

Other considerations include potentially requiring auditor attestation of current voluntary sustainability reporting and enhanced transparency by credit rating agencies regarding how they consider ESG factors.

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endnotes

[1] See SEC Acting Chair Allison Herren Lee, *A Climate for Change: Meeting Investor Demand for Climate and ESG Information at the SEC* (Mar. 15, 2021), available at <https://www.sec.gov/news/speech/lee-climate-change>.

[2] See ICI Memorandum No. 33131 (Feb. 25, 2021), available at https://www.ici.org/my_ici/memorandum/memo33131.

[3] SEC Acting Chair Allison Herren Lee, *Public Input Welcomed on Climate Change Disclosures* (Mar. 15, 2021), available at <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.

[4] See SEC, *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, Release No. IA-5325 (Aug. 21, 2019), available at <https://www.sec.gov/rules/interp/2019/ia-5325.pdf>.

[5] For a summary of the announcements of the Division of Enforcement's task force and the Division of Examinations' priorities, see ICI Memorandum No. 33170 (Mar. 9, 2021), available at https://www.ici.org/my_ici/memorandum/memo33170.

[6] See ICI Memorandum No. 33131 (Feb. 25, 2021), available at https://www.ici.org/my_ici/memorandum/memo33131.

[7] See ICI Memorandum No. 33143 (Mar. 2, 2021), available at https://www.ici.org/my_ici/memorandum/memo33143.

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