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SEC Chair Gensler Remarks on Anticipated ESG Rulemaking

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TO: ICI Members
ESG Advisory Group
ESG Task Force SUBJECTS: Disclosure
ESG
Financial Stability
Fund Accounting & Financial Reporting RE: SEC Chair Gensler Remarks on Anticipated ESG Rulemaking

SEC Chair Gensler spoke at a Principles for Responsible Investment-hosted webinar, which was attended by Fiona Reynolds, Margarita Pirovska, and Sagarika Chatterjee of PRI.[1] He indicated that staff is developing a mandatory climate risk disclosure rule proposal for the Commission's consideration by the end of the year.

Throughout the remarks, Chair Gensler analogized public company ESG-related disclosure to the Olympics, stating that just as the sports featured in the Olympics change over the years, "investors increasingly want to understand the climate risks of the companies whose stock they own or might buy. Large and small investors … are looking for this information to determine whether to invest, sell, or make a voting decision one way or another. Investors are looking for consistent, comparable, and decision-useful disclosures so they can put their money in companies that fit their needs."

He put this into historical context, noting that the

> first disclosures revolved around companies' financial performance. Then, there was investor demand for information about who runs the company. Later, investors wanted more information on how much a company's resources were dedicated to paying those executives. In 1964, the SEC started to offer guidance about risk factors. In 1980, the agency adopted Management's Discussion and Analysis sections in Form 10-K.

Chair Gensler noted that three of every four of responses filed in response to Commissioner Allison Herren Lee's statement on climate disclosures in March support mandatory climate disclosure rules.[2] He also noted that one report found that nearly two-thirds of companies in the Russell 1000 Index, and 90 percent of the 500 largest companies in that index, published sustainability reports in 2019 using various third-party standards.[3]

Chair Gensler then noted that he has asked the staff to consider whether climate change related disclosures should appear in the Form 10-K filed with the Commission.

He went on to observe that "investors benefit most when disclosures are 'decision-useful'" explaining that "decision-useful disclosure has sufficient detail so investors can gain helpful information [and that] he has asked the staff to consider a variety of qualitative and quantitative information about climate risk that investors either currently rely on, or believe would help them make investment decisions going forward."

He provided as an example of qualitative disclosure "how the company's leadership manages climate-related risks and opportunities and how these factors feed into the company's strategy" and noted that "quantitative disclosures could include metrics related to greenhouse gas emissions, financial impacts of climate change, and progress towards climate-related goals. He then noted that he has asked staff "to make recommendations about how companies might disclose their Scope 1 and Scope 2 emissions, along with whether to disclose Scope 3 emissions — and if so, how and under what circumstances…. and whether there should be certain metrics for specific industries, such as banking, insurance, or transportation."

Chair Gensler also asked

> whether companies might provide scenario analyses on how a business might adapt to the range of possible physical, legal, market, and economic changes that it might contend with in the future. That could mean the physical risks associated with climate change. It also could refer to transition risks associated with stated commitments by companies or requirements from jurisdictions.

He provided as an example that many companies have announced their intentions to reduce their greenhouse gas emissions by a certain date, making "net zero" commitments or other climate pledges … but not provide any information that stands behind that claim. For example, do they mean net zero with respect to Scope 1, Scope 2, or Scope 3 emissions?"

He went on to state that even companies that have not made these commitments might "operate in jurisdictions that have made commitments, such as to the Paris Agreement, that could lead to regulatory or economic changes within those locations [and that he has] asked staff to consider which data or metrics those companies might use to inform investors about how they are meeting those requirements." (Emphasis added.) Finally, Chair Gensler noted that he has asked staff to learn from other standards and frameworks such as the Task Force on Climate-related Financial Disclosures (TCFD) framework.

He then turned to "the other side of the equation: funds, stating that [w]e've seen a growing number of funds market themselves as "green," "sustainable," "low-carbon," and asked [w]hat information stands behind those claims? … I've directed staff to consider recommendations about whether fund managers should disclose the criteria and underlying data they use. I've also asked staff to consider whether we might take a holistic look at the Names Rule."

Chair Gensler's prepared remarks concluded with the statement that "[w]hen it comes to disclosure, investors have told us what they want. It's now time for the Commission to take the baton."

Chair Gensler then expressed the following points in a question-and-answer session:

- He is thinking about a proposal seeking comment on both backward (e.g., GHG metrics) and forward-looking climate disclosures (e.g., to support net zero pledges; to plan for future transition risks).
- He has had "several dozen conversations with IOSCO and FSB" and has asked staff to issue a proposal that "will be informed and inspired by global work" but noted that the Commission also must hear from commenters and work within its authority.
- The Commission has a role to play in addressing systemic risk in that maintaining orderly markets is an element of its three-part mission, which contemplates oversight of broker-dealers and clearing agencies and that disclosure helps to mitigate risks.

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endnotes

[1] Chair Gary Gensler, Prepared Remarks Before the Principles for Responsible Investment Climate and Global Financial Markets (July 28, 2021), available at https://www.sec.gov/news/speech/gensler-pri-2021-07-28.

[2] The Request for Information is available on the SEC's website at https://www.sec.gov/news/public-statement/lee-climate-change-disclosures as is the ICI's response to the request at https://www.sec.gov/comments/climate-disclosure/cll12-8883549-240438.pdf.

[3] *See* Governance & Accountability Institute, Inc., "2020 Russell 1000 Flash Report," available at https://www.ga-institute.com/research-reports/flash-reports/2020-russell-1000-flash-report.html.