

MEMO# 34583

December 14, 2022

SEC Commissioner Peirce's Speech on Proposed Climate Change Disclosure Rule for Public Companies

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TO: ESG Advisory Group

ESG Public Company Disclosure Working Group RE: SEC Commissioner Peirce's Speech on Proposed Climate Change Disclosure Rule for Public Companies

Commissioner Peirce recently delivered remarks which include her views on the SEC's proposed climate change disclosure rule for public companies. She noted, among other things, that "the SEC should not inundate investors with immaterial items, but should focus their attention on material information."[\[1\]](#) Commissioner Peirce's remarks are summarized below.

Potential Impact of Disclosure Requirement on Company Behavior

Commissioner Peirce, in discussing elements of the rule proposal, noted that "[s]ome aspects of the climate proposal, rather than simply ferreting out information about what companies are doing with regard to climate, may end up interfering with corporate decision-making and may do so in an inflexible way that does not take into consideration differences across companies." She further stated that "[a]lthough these requirements are disclosure-based, they almost certainly will affect the substance of what companies do."

Materiality

Commissioner Peirce then pointed out that "[p]rinciples-based mandates enable companies to present information about risks and opportunities that are material to them and omit information that is not financially material. The climate proposal, by contrast, through numerous specific disclosure mandates, could elicit granular, immaterial information." She added that "[i]f the proposal were adopted, climate risk would occupy a lot of space in every company's SEC filings. The resulting disclosure could over-emphasize climate issues and obscure differences across companies."

Potential for Investor Confusion

Commissioner Peirce went on to highlight the potential for investor confusion, stating that

"[a]lmost or all of the previously mentioned granular disclosure requirements around physical risk, particularly over the long-term time horizon, could be of limited use to investors because they will require companies to speculate about fundamentally unknowable risks." She then noted that "the SEC proposes to require companies to disclose whether and how a company is preparing for a risk that may or may not happen years in the future, the occurrence of which depends upon the actions of a multitude of other parties. These disclosures will be inherently speculative."

The SEC's Role

Commissioner Peirce concluded her remarks by noting that, "[t]he SEC's role is to serve as referee in ... competitive markets, not as coach or player. Some of our current rulemaking endeavors seek to displace competitive forces with SEC mandates."

Joshua Weinberg
Associate General Counsel, Securities Regulation

Notes

[1] See Commissioner Hester M. Peirce, It's Not Just Scope 3: Remarks at the American Enterprise Institute (December 7, 2022), <https://www.sec.gov/news/speech/peirce-remarks-american-enterprise-institute-120722>.

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