

SEC in Focus

Quarterly summary of current SEC activities

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Stakeholders weigh in on proposed climate-related disclosures

The Securities and Exchange Commission (SEC) received more than 15,000 comment letters to date on its proposed rules on climate-related disclosures, after extending the comment period deadline in response to significant interest from a wide variety of stakeholders, including investors, issuers and market participants, and others. The proposed rules would enhance and standardize disclosures that public companies make about climate-related risks, their climate-related targets and goals, their greenhouse gas (GHG) emissions and how the board of directors and management oversee climate-related risks. The proposal would also require registrants to quantify the effects of certain climate-related events and transition activities in their audited financial statements.

In our **comment letter**, we express strong support for the proposal and the SEC’s efforts to meet the growing needs of investors for decision-useful information about climate change, including the disclosure of GHG emissions and the related assurance requirements. We commend the SEC for leveraging the framework developed by the Task Force on Climate-related Financial Disclosures and the Greenhouse Gas Protocol and for taking a leadership role in the global regulatory landscape. We also provide the SEC with recommendations to help improve the proposal while expressing concerns about the proposed financial statement disclosure requirements that we believe would be challenging for companies to implement without further guidance.

The SEC will now consider the public’s feedback and decide whether and how to amend the proposal before voting on a final rule. If the rules are adopted as proposed and in a timely fashion, the compliance date, which depends on a registrant’s filer status, would be phased in beginning with fiscal year 2023.



How we see it

Many of the investors and stakeholders providing feedback to the SEC support the overall need for consistent, comparable and reliable climate-related disclosures, including coordination with global standard setters in developing a single set of baseline global standards for disclosure of environmental, social and governance (ESG) matters. However, companies are questioning the cost burden of the proposed rules and have concerns about the timeline for transition, among other matters.

While we expect that the SEC will need time to evaluate the feedback, registrants may continue to receive comment letters from the SEC staff related to climate disclosures.

Reminders on reporting and filer status considerations

As a reminder, SEC registrants are required to closely monitor whether they continue to qualify as a smaller reporting company, an emerging growth company and/or a foreign private issuer and to perform annual redetermination tests at the end of their second fiscal quarter. Registrants are also required to verify their filing status every year to determine the deadline for filing their periodic reports.

This is particularly important in light of the current significant market volatility, since calendar-year registrants could wind up changing their filing status based on their public float at 30 June and having to adjust their filing timeline, or triggering the requirement for external auditor attestation about the effectiveness of their internal control over financial reporting.

Other SEC rulemaking and staff initiatives

SEC amends proxy rules related to proxy voting businesses

The SEC adopted amendments that rescind two conditions added in 2020 that proxy voting advice businesses have had to meet to qualify for exemption from the proxy rules' information and filing requirement. Those conditions required that (1) registrants that are the subject of proxy voting advice have such advice made available to them in a timely manner and (2) clients of proxy voting advice businesses are provided with a means of becoming aware of any written responses by registrants to proxy voting advice.

The amendments and the rescission of the guidance are effective 60 days after publication in the Federal Register.

SEC proposes amendments to the shareholder proposal rule

The SEC proposed amendments to its shareholder proposal rule, Exchange Act Rule 14a-8, that generally requires companies to include shareholder proposals in their proxy statements absent a basis for exclusion.

The proposed amendments would revise certain substantive bases to permit the exclusion of shareholder proposals in proxy statements when:

- ▶ The company has "already implemented the essential elements" of the proposal rather "substantially implemented the essential element".
- ▶ The proposal "substantially duplicates" another proposal previously submitted for the same shareholder meeting by addressing the same subject matter and seeks the same objective by the same means.
- ▶ The proposal constitutes a resubmission by substantially duplicating (as defined above) another proposal that was previously submitted for the same company's prior shareholder meetings.

Comments are due by the later of 30 days after publication in the Federal Register or 12 September 2022.

EY resources

- ▶ [To the Point, SEC proposes enhancing and standardizing climate-related disclosures](#)
- ▶ [Tech Line, Reminders on reporting and filer status considerations for SEC registrants](#)
- ▶ [Tech Line, Accounting and reporting considerations for the war in Ukraine](#)

SEC posts sample comment letter on effects of the war in Ukraine and other issues

The SEC's Division of Corporation Finance posted a sample [comment letter](#) on the SEC website to illustrate the types of comments it may issue to companies regarding disclosures on the direct and indirect effects of the war in Ukraine, the sanctions on Russia and related supply chain issues.

In posting the letter, the SEC staff reminded registrants that they have obligations to provide detailed disclosures, if material or otherwise required, about matters such as:

- ▶ Impacts on a registrant's business (e.g., reliance on goods or services sourced in Russia or Ukraine and business relationships in, connections to or assets in Russia, Belarus or Ukraine) or, if the impacts are not material, an explanation about why they are not material
- ▶ Any known trends or uncertainties that would have a material impact on a registrant's cash flow, liquidity, capital resources, cash requirements, financial position or results of operations
- ▶ New or heightened risk of cyber attacks

The letter indicates that registrants may also need to reflect and disclose in their financial statements the impairment of assets, changes in inventory valuation, deferred tax asset valuation allowance, disposal or exiting of a business, deconsolidation, changes in exchange rates and changes in contracts with customers or in their ability to collect contract consideration. The letter says that registrants should consider how these matters affect management's evaluation of disclosure controls and procedures and management's assessment of the effectiveness of internal control over financial reporting. The letter also says that the SEC staff may ask registrants to describe the extent and nature of the role of the board of directors in overseeing risks related to these events, including risks related to cybersecurity, sanctions, employees based in affected regions and supply chain issues.

The letter indicates that the staff may also ask registrants to remove certain non-GAAP adjustments to financial measures if they do not comply with SEC rules and regulations, or staff guidance.

How we see it

We have observed the SEC staff issuing comment letters to registrants on the direct and indirect effects of the war in Ukraine that are consistent with the sample comment letter discussed above.

SEC proposes enhancing disclosures by certain funds and advisers on ESG investment practices

The SEC **proposed** amending rules and reporting forms to enhance disclosures about ESG investment practices of registered investment companies, business development companies, registered investment advisers and certain unregistered advisers.

The proposal would require additional disclosures about ESG strategies in fund prospectuses, annual reports and adviser brochures as well as the use of a layered, tabular disclosure approach for ESG funds to allow investors to easily compare those funds. The proposal would also require certain environmentally focused funds to disclose GHG emissions associated with their portfolio investments. The level of detail required by these enhanced disclosures would depend on the extent that ESG factors are considered in the investment process.

Comments are due by 16 August 2022.

SEC proposes amended rules to prevent misleading or deceptive fund names

The SEC **proposed** amending the rule under the Investment Company Act of 1940 that addresses certain categories of fund names that are likely to mislead investors about that fund's investments and risks.

The proposal would enhance and clarify the requirement for certain funds to adopt a policy to invest at least 80% of the value of their assets in accordance with the investment focus that the fund's name suggests. It would also update notice requirements and establish recordkeeping requirements.

In addition, the proposal would enhance prospectus disclosure requirements for terminology used in fund names and include additional requirements for funds to report information on Form N-PORT regarding compliance with the proposed names-related regulatory requirement.

Comments are due by 16 August 2022.

SEC reopens comment period for clawback proposal

The SEC **reopened** the comment period on its 2015 proposal that would direct national securities exchanges to establish listing standards requiring companies to develop and implement policies to recover incentive-based compensation after an accounting restatement. The SEC staff also released a memo that provides additional analysis and data to help stakeholders evaluate the proposal.

The proposal, which was mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), would require companies to claw back incentive-based compensation received by current and former executive officers during the three years preceding an accounting restatement.

Comments on the initial proposal, the staff memo and the additional questions the SEC raised when it previously reopened the comment period in October 2021 are due by 14 July 2022.

Stakeholders weigh in on proposed cybersecurity disclosure rules

The SEC has received more than 140 comment letters on its proposed rules aimed at enhancing and standardizing disclosures that registrants make about cybersecurity incidents and their cybersecurity risk management, strategy and governance. Like other respondents, we generally support the SEC's objective but recommend in our **comment letter** that the SEC provide more guidance or establish a framework for determining which cybersecurity incidents that were previously undisclosed because they were individually immaterial would need to be aggregated and disclosed when they become material in the aggregate.

Stakeholders weigh in on SEC's proposed rules regarding SPACs

The SEC has received more than 80 comment letters on its proposed rules aimed at enhancing investor protection in an initial public offering (IPO) by a special purpose acquisition company (SPAC) and in a subsequent business combination transaction between a SPAC and a private operating company (de-SPAC transaction). In our **comment letter**, we support the SEC's overall objective, including its efforts to enhance and clarify disclosure and reporting requirements and align the treatment of a de-SPAC transaction more closely with a traditional IPO. Like some other respondents, we provided certain observations and recommendations for the SEC's consideration.

Personnel changes

Senate confirms two new SEC commissioners

The Senate unanimously confirmed Mark Uyeda and Jaime Lizárraga to serve as SEC Commissioners, and Mr. Uyeda was sworn in on 30 June 2022. When Mr. Lizárraga is sworn in, all five seats on the Commission will be filled.

EY resources

- ▶ [To the Point, SEC proposes requiring more cybersecurity disclosures](#)
- ▶ [To the Point, SEC proposes new SPAC disclosures and expanded liability for parties in SPAC transactions](#)

Mr. Uyeda succeeds former Republican Commissioner Elad Roisman, who stepped down in January 2022 before the end of his term. Mr. Uyeda will serve the remainder of Mr. Roisman's term, which expires in June 2023. He has served on the SEC staff since 2006 and has more than 25 years of experience in corporate and securities law.

Mr. Lizárraga will succeed departing Democratic Commissioner Allison Herren Lee and will have a five-year term through June 2027. He is currently a senior advisor to House Speaker Nancy Pelosi, overseeing financial markets, housing and immigration issues.

Enforcement activities

Pest control company, former CFO charged with improper earnings management

The SEC charged a provider of pest control services with engaging in improper accounting practices to increase its quarterly earnings per share (EPS) to meet analysts' consensus estimates. The action is part of the Division of Enforcement's EPS Initiative, a risk-based data analytics program that identifies companies for investigation.

According to the SEC's order, the company made unsupported accounting adjustments under the direction of the former chief financial officer that reduced the company's accounting reserves, allowing it to round up reported EPS to the next penny. The order also found that the company made other accounting entries over multiple quarters that were not supported by documentation. To settle these charges (without admitting or denying the SEC's findings), the company and the chief financial officer have agreed to cease and desist from future violations related to the charges and pay civil penalties of \$8 million and \$100,000, respectively.

SEC charges technology company and senior employees with misconduct

The SEC charged a technology company, and certain of its former officers and employees, with engaging in fraud through accounting improprieties over a multi-year period.

The SEC alleged that the company's improper accounting included transactions where there was no persuasive evidence of an arrangement and the improper recognition of revenue on license and service agreements.

Without admitting or denying the SEC's findings, the company agreed to cease and desist from violating section 10(b) of the Securities Exchange Act of 1934 and other provisions of securities laws, and to pay a civil penalty of \$12.5 million. Certain individuals also agreed to settle and pay civil penalties for their role in the matter.

The SEC has filed a complaint in federal district court against the company's former chief financial officer and former controller, who did not agree to settle. In the complaint, the SEC asserts multiple violations of federal securities law and alleges that the defendants misled the company's auditor. Further, while not charged with misconduct, the company's former chief executive officer agreed to reimburse the company for stock sale profits and bonuses and return stock grants pursuant to Section 304 of the Sarbanes-Oxley Act.

What's next at the SEC?

We expect the SEC to move quickly to finalize rules and issue proposals on topics on its [regulatory agenda](#), including required rulemaking under the Dodd-Frank Act and proposals related to disclosures on human capital and corporate board diversity.

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The SEC staff's
ever-increasing
sophistication with
data ... underscores
that we will
continue to pursue
public companies
that lack adequate
accounting controls
and engage in
improper earnings
management
practices.

— Director of the SEC's
Division of Enforcement
Gurbir Grewal

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