

A photograph of a male worker in a white uniform and cap working on a car chassis in a factory. The worker is wearing safety glasses and is focused on his task. The background shows a large industrial facility with various equipment and car parts.

SEC Consideration of New ESG Disclosure Requirements

Charles Crain
Senior Director, Tax & Domestic Economic Policy
National Association of Manufacturers



Background: ESG Disclosures

- “Environmental, Social, Governance”
 - Climate change, sustainability, water & electricity usage, diversity & inclusion, workforce development, social issues, political contributions & lobbying, executive compensation, board composition
- Most public companies provide some ESG information; reporting venues include sustainability report, annual report, proxy statement, SEC filings
- ESG information sought by stakeholders ranging from large institutional investors to issue activists; some businesses utilize third-party frameworks like TCFD & SASB
- Key priority of Biden Administration and SEC majority



Biden EO on Climate-Related Financial Risk

- President Biden issued EO announcing “whole-of-government approach” to climate-related financial risk on May 20
- EO directs FSOC to issue a report on:
 - Enhancing climate disclosures
 - Incorporating climate risk into regulatory oversight
 - Identifying and mitigating climate risks to federal government and U.S. financial system
- Report expected by mid-October



ESG in the Gensler SEC

- **Feb./Mar. 2021** – Acting Chair Lee announces key ESG initiatives
 - Div. of Corporation Finance – Review of company climate disclosures and usage of 2010 climate change reporting guidance
 - Div. of Examinations – Climate change-based review of business continuity and disaster relief plans
 - Div. of Enforcement – New Climate and ESG Task Force to identify “ESG-related misconduct” and gaps in issuers’ climate disclosures
- **Mar. 2021** – SEC publishes request for public information on climate change disclosures



SEC Climate Change RFI

- How can the SEC provide “consistent, comparable, and reliable” information for investors and greater clarity for issuers?
- Investor and issuer use of climate information? Risk/opportunity/cost analysis practices? Scenario planning?
- What climate information can be quantified and measured? Specific metrics (e.g., Scope 1, 2, or 3 emissions)? What information is material?
- Different standards for different industries? Industry-developed frameworks? Scaled requirements based on size?
- Incorporate or outsource to existing frameworks (e.g., TCFD, SASB, GRI)? Global alignment?
- Form/venue of reporting – “Filed” vs. “furnished”? “Comply or explain”?
- Apply to private companies?
- Expand to other ESG topics?



NAM Comments on SEC RFI

- Provide **clarity** to businesses and **comparability** to investors
- Focus on reporting requirements that are **financially material**
- Allow for **flexibility** in disclosures; avoid one-size-fits-all requirements
- **Limit costs and liability** – e.g., disclosures “furnished to” SEC rather than “filed with”
- **Don’t re-invent the wheel** – rely on existing practices, including companies’ experiences with other regulators (e.g., EPA GHGRP) and TCFD/SASB
- Give time for ESG + company reporting to evolve; allow for **extended implementation**; provide exemptions for smaller companies
- Avoid policy goals outside the SEC’s purview



SEC 2021-2022 Regulatory Agenda

- **October 2021**
 - Climate Change Disclosures
 - Human Capital Management
 - Corporate Board Diversity
 - Cybersecurity Risk Disclosures
 - Rule 10b5-1 Trading Plans
- **April 2022**
 - Stock Buybacks Disclosures
 - Rescind 2020 Proxy Advisory Firm rule
 - Rescind 2020 Shareholder Proposal rule
 - Rescind 2020 Resource Extraction rule



Climate Change Disclosures

- Proposed rule likely in Q4 2021
- Chairman Gensler highlighted his priorities in a July speech:
 - “Consistent” and “comparable” disclosures = **mandatory**
 - **Qualitative disclosures** – management of climate risks/opportunities; incorporation into company’s strategy
 - **Quantitative disclosures** – GHG emissions; financial impacts of climate change; progress toward climate goals
 - “I’ve 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.”
 - **Scenario risks** – physical risks of climate change; transition risks; “net zero” pledges; Paris Agreement and/or other regulatory requirements
 - SEC framework rather than designation of TCFD/SASB



Climate Change Disclosures

- Outstanding questions from Gensler speech
 - “How” Scope 1 and Scope 2 vs. “whether” Scope 3
 - Specific metrics for certain industries – e.g., banking, insurance, transportation
 - Filed in Form 10-K (public company annual report) vs. furnished
 - Implementation timeline



Human Capital Management

- Proposed rule likely in Q4 2021
- **Nov. 2020** – SEC adopts principles-based HCM rule
 - Companies must provide description of human capital resources (incl. # of employees) + any key HCM measures/objectives (e.g., efforts to develop, attract, or retain personnel)
- **Aug. 2021** – Gensler tweet providing detail on potential HCM rule
 - Workforce demographics (including diversity)
 - Workforce turnover
 - Skills and development training
 - Compensation and benefits
 - Health and safety



Board Diversity

- Less-developed than climate change and HCM disclosures
- SEC recently approved a Nasdaq listing standard that could be a model
- Nasdaq-listed companies must either:
 - Have two diverse board members (one by 2023; two by 2025)
 - 1 woman
 - 1 member of an underrepresented minority or the LGBTQ+ community
 - OR Disclose why they do not



Political Spending Disclosures

- Not currently on the SEC's regulatory agenda, but favored by members of the Commission
- Currently prevented from rulemaking by an appropriations rider
- Commissioner Lee March 2021 speech:
 - “Political spending disclosure is key to any discussion of sustainability.”
 - “Consider for instance research showing that many companies that have made carbon neutral pledges, or otherwise state they support climate-friendly initiatives, have donated substantial sums to candidates with climate voting records inconsistent with such assertions.”



Next Steps for Public Companies

- Likely proposed rule(s) in Q4 2021 followed by 60-day comment period(s)
- Business community engagement is critical
- Issuers can connect with trade associations and engage directly with the SEC
- Under the APA, comment letters in the SEC docket must be considered in the final rule(s)
- Share specific experiences with SEC staff



The image features a large, white, stylized logo consisting of the letter 'M' followed by a period, centered on a blue-tinted background. The background is a photograph of a factory floor, showing various pieces of machinery, including a forklift with the number '1135' on its side, and workers in the distance. The overall scene is industrial and brightly lit, with a grid of overhead beams and lights visible. The blue tint is uniform across the entire image, creating a cohesive and professional look.

M.