



## In This Issue

- [Background](#)
- [Climate-Related Topics in the 2010 Interpretive Release](#)
- [Details of the Request for Input](#)
- [How to Respond to the Request for Input](#)
- [Other ESG Resources](#)

# SEC Requests Input on Climate-Related and Other ESG Disclosures

by Consuelo Hitchcock, Doug Rand, Kristen Sullivan, and Emily Abraham, Deloitte & Touche LLP

Each week over the past month, the SEC has made at least one public statement emphasizing the importance of climate-related and other environmental, social, and governance (ESG) disclosures to investors and the capital markets. Most recently, Acting SEC Chair Allison Herren Lee issued a [request for input](#) on climate-change disclosures and has asked interested parties to provide feedback to the SEC by June 13, 2021. The request for input and several SEC communications leading up to it are discussed below.

## Background

On February 24, 2021, Acting Chair Lee issued a [statement](#) directing the SEC's Division of Corporation Finance (DCF) to increase its focus on climate-related disclosures when reviewing public company filings, including assessing the extent to which public companies have disclosed information that is consistent with the SEC's [2010 interpretive release](#), *Commission Guidance Regarding Disclosure Related to Climate Change*. The same week, the SEC issued an [investor bulletin](#) designed to educate investors about ESG funds.

On March 3, 2021, the SEC's Division of Examinations [announced](#) its [2021 examination priorities](#), which include a focus on registered investment advisers and funds that concentrate on sustainability (or that use similar descriptions, such as sustainable, socially responsible, impact, or ESG conscious). On the following day, the SEC [announced](#) the formation of the Climate and ESG Task Force in the Division of Enforcement, which will initially focus on identifying any "material gaps or misstatements in issuers' disclosure of climate risks under existing rules" as well as compliance issues related to investment advisers' and funds' ESG strategies.

Acting DCF Director John Coates issued a [statement](#) on March 11, 2021, addressing the SEC's responsibility for, and the perceived challenges of, creating an effective ESG disclosure system.

On March 15, 2021, Acting Chair Lee gave a [speech](#) regarding the SEC's role in ensuring that investors have access to reliable, comparable information on climate change and other ESG matters. On the same day, she issued the request for input on climate-change disclosures. In the request, she noted that the SEC staff will use insights gained from reviewing the work begun in response to her February 24, 2021, statement when determining whether to make updates to the climate-change guidance in the 2010 interpretive release (see discussion below). Given the investor demand for climate and other ESG information, the SEC has established a [Web site](#) to highlight its actions and provide information about ESG investing.

## Climate-Related Topics in the 2010 Interpretive Release

In the request for input, Acting Chair Lee noted that the 2010 interpretive release identifies four topics related to climate change that public companies should consider when assessing what information to provide in their filings under existing SEC disclosure requirements. Those four topics are summarized below.

### Impact of Legislation and Regulations

Developments related to federal and state climate-change legislation and regulations may trigger disclosure obligations. Public companies should determine what specific risks they face as a result of such developments. A public company's sensitivity to certain legislation or regulations may vary according to the nature of its business and industry. A public company should "avoid generic risk factor disclosure" that could apply to any public company.

MD&A disclosures are required about any known trends or uncertainty, which may include legislation or regulations that a public company determines are reasonably likely to have a material effect on its financial condition or results of operations. The public company should also consider disclosing the "difficulties involved in assessing the timing and effect of the pending legislation or regulation," if material.

In addition, a "registrant should not limit its evaluation of disclosure of a proposed law only to negative consequences." Changes to a public company's business practices as a result of changes in the law may present new opportunities for certain public companies.

### International Accords

Public companies should consider and disclose, when material, the business effect of international accords and treaties related to climate change. The disclosure obligations related to U.S. climate-change regulations also apply to international accords.

### Indirect Consequences of Regulation or Business Trends

Public companies should consider the need to disclose, as risk factors or in MD&A, the actual and potential indirect consequences of regulations or business trends related to climate change. If the potential impacts are significant enough, disclosure may also be required in the public company's business description. In addition, public companies need to determine whether the possibility of reputational damage due to public perception of the potential adverse consequences to the public company's business would warrant the inclusion of a risk factor related to reputation.

## Physical Impacts of Climate Change

Public companies should consider the actual and potential impacts of the physical effects of climate change on the business. When a public company is particularly vulnerable to severe weather or climate-related events, it should disclose the material risks and related consequences of such weather or events.

For more information about the 2010 interpretive release, see Deloitte's February 5, 2010, [Heads Up](#).

Since issuance of the 2010 interpretive release, the DCF has periodically provided comments to public companies regarding the topics addressed in the release, generally to ask such companies to elaborate on their consideration of the release in developing their disclosures. Given Acting Chair Lee's directive to the DCF to focus on such disclosures, the frequency of SEC comments may increase.

## Details of the Request for Input

Acting Chair Lee noted that the request for input is intended to help the SEC staff evaluate SEC disclosure rules "with an eye toward facilitating the disclosure of consistent, comparable, and reliable information on climate change." To meet these objectives, respondents are encouraged to consider the SEC's existing disclosure requirements as well as possible new disclosure requirements and disclosure frameworks.

Detailed questions listed in the request for input address a number of specific topics, including:

- Development and maintenance of climate-related disclosure frameworks, standards, and requirements, including industry-specific or global disclosure requirements as well as the role the SEC should play in standard setting.
- Application of new requirements, including whether they should be scaled on the basis of the public company's industry or size and whether they should be phased in over time.
- Presentation and location of climate-related disclosures, including whether the disclosures should be included in a public company's annual report or separately filed or furnished with the SEC.
- Quantification, measurement, use, and evaluation of climate-related risks.
- Disclosure of public companies' governance and oversight related to climate change.
- Assessment of climate-related disclosures, including through audit or other forms of assurance.
- Measures to ensure that climate-related disclosures are reliable (e.g., through management's internal controls or certification).
- Use of "comply or explain" frameworks for climate-related disclosures.
- The SEC's role in addressing climate-related disclosures for private companies (e.g., related to exempt offering or oversight of investment advisers and funds).

In her March 15, 2021, speech, Acting Chair Lee highlighted a February [statement](#) issued by the International Organization of Securities Commissions (IOSCO), of which the SEC is a member. She expressed her support for IOSCO's commitment to work with the trustees of the IFRS Foundation on its [initiative](#) to form a global Sustainability Standards Board (SSB). The new SSB would build on previous ESG standard-setting work, including that associated with developing the [prototype climate-related financial disclosure standard](#) proposed by an alliance of leading standard setters for sustainability reporting.

Also in her speech, Acting Chair Lee raised the idea of establishing a U.S. sustainability standard setter, noting that “[o]ne potential path that we should consider 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 our financial reporting framework.”

In addition to the topics listed above, the request for input states that the SEC staff is evaluating other ESG disclosure matters and encourages respondents to consider whether climate-related disclosures should be incorporated into a broader ESG disclosure framework. Besides those related to climate, potential disclosure topics specifically mentioned in Acting Chair Lee’s March 15, 2021, speech include worker safety, human capital (including workplace and board diversity), human rights, and political spending. She also suggested that the SEC’s role in addressing ESG matters expands beyond disclosure and includes considerations regarding shareholder proposals and proxy voting processes.



### Connecting the Dots

As a result of the SEC’s final rule that modernizes certain disclosure requirements in Regulation S-K, effective November 9, 2020, public companies must disclose any “human capital measures or objectives that management focuses on in managing the business.” See Deloitte’s [September 3, 2020](#), and [November 3, 2020](#), *Heads Up* newsletters for more information about the final rule and human capital disclosures, respectively. In her March 15, 2021, speech, Acting Chair Lee indicated that the SEC may consider additional “guidance on human capital disclosure to encourage the reporting of specific metrics like workforce diversity.”

## How to Respond to the Request for Input

The SEC has encouraged all interested parties to provide feedback on any of the questions included in the request for input, including empirical data and other information to support their views. The SEC is interested in feedback from investors, companies, and other market participants on the topic and does not require a specific format for the submission of comments. Some commenters may choose to present their views in a narrative format without any reference to specific questions posed in the request, and others may choose to answer all, or only some, of the questions. Any format is acceptable, and the SEC encourages all types of feedback. Feedback can be provided on the SEC’s [Web site](#) or by [e-mail](#) and is due by June 13, 2021.

## Other ESG Resources

For additional information about ESG matters, see the following publications:

- Deloitte’s [Defining the Role of the Audit Committee in Overseeing ESG](#).
- Deloitte’s *Heads Up* [“Human Capital Measures Up.”](#)
- Deloitte’s *Heads Up* [“Enhancing Trust in ESG Disclosures.”](#)
- The Center for Audit Quality’s [The Role of Auditors in Company-Prepared ESG Information: A Deeper Dive on Assurance](#).
- FASB Staff Educational Paper [Intersection of Environmental, Social, and Governance Matters With Financial Accounting Standards](#).

## ***Dbriefs* for Financial Executives**

We invite you to participate in *Dbriefs*, Deloitte's webcast series that delivers practical strategies you need to stay on top of important issues. Gain access to valuable ideas and critical information from webcasts in the "Financial Executives" series on the following topics:

- Business strategy and tax.
- Financial reporting.
- Tax accounting and provisions.
- Controllership perspectives.
- Governance, risk, and compliance.
- Transactions and business events.
- Driving enterprise value.
- Innovation in risk and controls.

*Dbriefs* also provides a convenient and flexible way to earn CPE credit — right at your desk.

## **Subscriptions**

To subscribe to *Dbriefs*, or to receive accounting publications issued by Deloitte's Accounting and Reporting Services Department, please register at [My.Deloitte.com](https://my.deloitte.com).

## **The Deloitte Accounting Research Tool**

Put a wealth of information at your fingertips. The Deloitte Accounting Research Tool (DART) is a comprehensive online library of accounting and financial disclosure literature. It contains material from the FASB, EITF, AICPA, PCAOB, and SEC, in addition to Deloitte's own accounting manuals and other interpretive guidance and publications.

Updated every business day, DART has an intuitive design and navigation system that, together with its powerful search and personalization features, enable users to quickly locate information anytime, from any device and any browser. While much of the content on DART is available at no cost, subscribers have access to premium content, such as Deloitte's *FASB Accounting Standards Codification Manual*. DART subscribers and others can also [subscribe](#) to *Weekly Accounting Roundup*, which provides links to recent news articles, publications, and other additions to DART. For more information, or to sign up for a free 30-day trial of premium DART content, visit [dart.deloitte.com](https://dart.deloitte.com).

*Heads Up* is prepared by members of Deloitte's National Office as developments warrant. This publication contains general information only and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.

The services described herein are illustrative in nature and are intended to demonstrate our experience and capabilities in these areas; however, due to independence restrictions that may apply to audit clients (including affiliates) of Deloitte & Touche LLP, we may be unable to provide certain services based on individual facts and circumstances.

As used in this document, "Deloitte" means Deloitte & Touche LLP, a subsidiary of Deloitte LLP. Please see [www.deloitte.com/us/about](https://www.deloitte.com/us/about) for a detailed description of the legal structure of Deloitte LLP and its subsidiaries.