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SEC Reporting & Compliance Alert

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SEC Chair Gensler Outlines Roadmap for Climate Risk Disclosure Rulemaking

In prepared remarks on July 28, 2021, Chair Gary Gensler of the Securities and Exchange Commission (SEC) set forth key considerations for the staff to address in the SEC's forthcoming rulemaking proposal on mandatory climate risk disclosures, which he expects to be released by the end of 2021. While proposed rules are still developing, Chair Gensler's remarks provide much-awaited visibility into the SEC's approach to a climate risk disclosure framework.

Chair Gensler pointed to strong investor demand as the main driver behind the SEC's expected climate risk disclosure rulemaking. He highlighted that, among more than 550 distinct comment letters submitted in response to Commissioner Allison Herren Lee's request for public input on climate disclosures, three out of every four letters supported mandatory climate disclosure rules. Commenters represented diverse groups, including some of the largest public companies, institutional investors and financial institutions, as well as disclosure standard-setting organizations and state and federal elected officials.

Noting that investors today are seeking "consistent, comparable, and decision-useful" climate risk disclosures, Chair Gensler outlined rulemaking considerations aimed at promoting such disclosures, including the following:

1. **Location of Disclosure:** Whether climate disclosure should be required to be filed in the Form 10-K, which includes other information investors generally rely on to make investment decisions?
2. **Qualitative Disclosure**: What types of descriptive disclosures should be required to answer key investor questions, such as how a company's leadership manages climate-related risks and opportunities and how managing those risks and opportunities plays a role in the company's strategy?
3. **Quantitative Disclosure:** What types of comparable measures across companies should be required, such as metrics related to greenhouse gas emissions, financial impacts of climate change and progress towards climate-related goals?
   - Importantly, Chair Gensler highlighted that quantitative disclosures should include more than a "net zero" emissions goals announcement and should provide specific/supporting information.
   - Chair Gensler also asked the staff of the SEC to consider whether and how disclosure of Scope 3 emissions should be required, in addition to how companies might disclose their Scope 1 and Scope 2 emissions.

4. **Industry-Specific Disclosure:** Whether to establish specific or different climate disclosure metrics based on a company's industry, *e.g.*, for businesses in the banking, insurance or transportation sectors?
5. **Scenario Analysis:** Whether and how companies might provide analyses on how their businesses would adapt to the range of possible physical, legal, market and economic changes they may contend with in the future?
   - These risks could include physical risks associated with climate change or transition risks associated with public climate commitments by companies.
6. **Jurisdictional Requirements:** Whether and what kinds of data or metrics disclosures to require for companies that operate in countries, states and/or localities that have made commitments to climate targets, such as the Paris Agreement, that could lead to regulatory or economic changes in those jurisdictions?
7. **External Standards:** What to learn from external standard-setters, such as the Task Force on Climate-related Financial Disclosures (TCFD) framework?
   - Chair Gensler emphasized that the SEC will develop its own climate risk disclosure regime appropriate for U.S. markets and investors.

While the SEC's proposed rulemaking is still forthcoming, the considerations outlined above should help guide companies as they prepare for more robust climate risk disclosures.

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