

SEC Sample Letter to Companies Regarding Climate Change Disclosures

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Recently, Katten public company clients, like many other public companies, have been receiving comment letters relating to climate change disclosure. Such comment letters are along the lines of an illustrative [comment letter released by the Securities and Exchange Commission's \(SEC\) Division of Corporation Finance](#) (Division) in September 2021 containing sample comments that the Division may issue to registrants regarding their climate-related disclosure or the absence of such disclosure. The Division notes that a number of existing rules related to description of business, legal proceedings, risk factors and management's discussion and analysis of financial condition may all require disclosure regarding climate-change related risks and opportunities. The sample letter comments are grouped into three topics:

General: This comment relates to discrepancies in the scope of climate-change disclosure in a registrant's corporate social responsibility report compared to its SEC filings. If the disclosure in its corporate social responsibility report is more expansive than in its SEC filings, the registrant may be required to explain why it did not provide the same level of disclosure in its SEC filings.

Risk Factors: The Division included two comments related to risk factors, which ask the registrant to disclose climate-change risks related to: policy and regulatory changes that impose operational and compliance burdens; market trends that alter business opportunities; credit risks; technological changes; and material litigation.

MD&A: The Division included six comments related to management's discussion and analysis (MD&A). The comments touch on a wide range of topics, including: identifying material pending or existing climate change legislation and any material effect on the business; identifying any material past and/or future capital expenditures for climate-related projects; discussing the indirect consequences of climate-related regulation on business trends (e.g. decreased demand for goods or

services that produce significant greenhouse gas emission); and disclosures about the purchase or sale of carbon credits or offsets.

We encourage SEC registrants, to the extent they have not already received these SEC comments, to review the existing climate change disclosure in their periodic filings or in the context of a securities offering, and to prepare to address potential SEC comments related to climate change disclosure. We also encourage public companies to review climate change disclosure in other non-SEC filed company materials (such as its corporate social responsibility report) to ensure that statements made in such materials regarding climate change are consistent with statements made in the company's SEC reports.

The Division of Corporate Finance's illustrative comment letter is one component of the SEC's increased focus on climate change disclosure and enforcement under Chairman Gary Gensler. Such efforts also include the [SEC's launch of the Climate and ESG Task Force](#) within the Division of Enforcement in March. The Climate and ESG Task Force is charged with developing initiatives to proactively identify Environmental, Social, and Governance (ESG)-related misconduct. That same month, the [SEC also called on the investment community](#) to provide input on the adequacy and effectiveness of the SEC's rules applicable to climate change disclosures.

In June 2020, [the SEC announced](#) its 2021 regulatory agenda, and listed disclosure related to climate risk as a notable SEC rulemaking area. In [prepared remarks delivered in July](#), Gensler noted that 75 percent of the comment letters responding to the March 15 request for comment supported mandatory climate change disclosure rules. Gensler previewed that in response to investor demand for enhanced climate change disclosure, he has instructed the SEC to prepare a mandatory climate risk disclosure rule proposal by the end of 2021.

We continue to track the SEC's efforts with respect to climate change disclosure and enforcement. Please contact us if you have any questions regarding the SEC's illustrative comment letter or any other climate change disclosure developments.

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