

SEC launches Climate and ESG Task Force



Amy Wojnarwsky, Sarah Mancuso | Friday, March 19, 2021

On March 4, 2021, the Securities and Exchange Commission (SEC) announced the creation of a 22-member Climate and ESG Task Force in the Division of Enforcement. The SEC stated that increasing investor focus and reliance on environmental, social, and governance (ESG) disclosures and investments served as a catalyst for the creation of this Task Force to allow the SEC to proactively identify ESG-related misconduct and to “better police the market, pursue misconduct, and protect investors.” The press release announcing the Task Force can be found [here](#).

The Task Force will be limited to enforcing existing disclosure requirements rather than formulating additional ESG-related disclosures. The primary objective of the Task Force will be to identify material gaps and misstatements in issuers’ disclosure of climate risk under existing rules. It is likely that SEC enforcement actions in this space will involve fraud charges under Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 (Securities Exchange Act), Rule 10b-5 of the Securities Exchange Act, and books and record violations in violation of Section 13 of the Securities Exchange Act.

The creation of the Task Force comes at a time when consumers are prioritizing, and expecting companies to demonstrate, a focus on key social issues that align with their values including ESG-related priorities. As such, many public companies, financial institutions, broker dealers, municipal securities issuers, and private companies elect to include ESG-related disclosures on their websites, investor documents, and/or

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SEC filings even when these disclosures are not required. If entities include ESG disclosures, such entities should ensure that the disclosures are not overly broad or purely aspirational, but that the disclosures are accurate and tailored to the entity. Additional information on pitfalls relating to ESG disclosures and best practices in drafting such disclosures can be found [here](#).

McDonald Hopkins has a cross-disciplinary team that can assist you with any ESG-related issues. Our [Social Corporate Governance & Impact Investing](#) practice area can address governance issues, the development of metrics regarding sustainability, and drafting ESG disclosures. Further, we can assist in the event you have already made ESG disclosures to determine whether such disclosures are at substantial risk of violating current SEC disclosure requirements and strategizing remedies if necessary. We can also assist in the event of an inquiry or investigation initiated by the Task Force, other govern agency or investigative body to bring such inquiries to a positive outcome. If you have any questions regarding the contents of this post, please feel free to reach out to the attorneys listed below.



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