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# Regulation: SEC's Peirce Criticizes Climate-Related Disclosure Proposal

**December 13, 2022**

Regulation

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Securities and Exchange Commissioner Hester Peirce, in a **speech** delivered before a panel at the American Enterprise Institute, expressed her concern about the SEC's proposed climate-related disclosure rule. Peirce, one of two Republican commissioners on the five-member commission **voted against** the March release of the proposal. The SEC, which has recently re-opened the consultation period, has now received over 11,400 comment letters.

In her speech, Peirce stated that "[t]he SEC should not inundate investors with immaterial items but should focus their attention on material information," and that the disclosures "will require companies to speculate about fundamentally unknowable risks." Peirce expressed her view that "[p]rinciples-based mandates enable companies to present information about risks and opportunities that are material to them and omit information that is not financially material. The climate proposal, by contrast, through numerous specific disclosure mandates, could elicit granular, immaterial information." Peirce also explained that she understood why great attention had been given to the proposed Scope 3 disclosures "given the anticipated expense and, in some cases, the impossibility of producing disclosures that are anything better than best guesses." Peirce stated that "these patently difficult requirements may be distracting the public from other requirements proposed in the rule, which also could be extremely challenging from a compliance perspective and of limited or negative value to investors."

The panel reflected varying views on the SEC's proposal. Former SEC Commissioner Paul Atkins argued that the proposal exceeds the scope of the SEC's congressionally delegated authority by requiring disclosure of large amounts of immaterial information. Melissa McGregor of the Securities Industry and Financial Markets Association affirmed the importance of increased climate-related disclosures, but also contended that the proposal would require excessive disclosure, resulting in an undue burden on corporations and making it more difficult for investors to find material information. Madison Condon, a professor of environmental and

corporate law at Boson University, asserted that the proposed disclosures are not as burdensome as some commentators suggest and are necessary for the SEC to keep pace with regulators in other jurisdictions. Former SEC Commissioner Robert Jackson rejected complaints about the proposal, highlighting that the SEC has required climate-related disclosures for decades, with the first such rule being issued during the Nixon administration. He also disagreed with concerns about providing investors with too much information, arguing that more information would result in more accurate asset prices.

**Taking The Temperature: The debate at the American Enterprise Institute reflects the differing views currently being expressed by investors and financial institutions across the marketplace. To those opposed to proposal, the views expressed by Commissioner Peirce in this speech appropriately raise concerns regarding the potential for excessive regulatory burden being placed on corporations as a result of proposed disclosure requirements, particularly with respect to Scope 3 disclosure requirements. Other concerns include that existing broad-based disclosure requirements are adequate to cover climate change issues, obviating the need for specific climate guidance, and that the costs of compliance are excessive. Whatever their merit, in our view, these criticisms miss the point from the perspectives of directors and senior management. Whatever the content of the final SEC rule, the current Chair and Staff have articulated their views on required disclosure, and companies ignore that guidance at their peril, at least with respect to the many "traditional" areas of corporate operations and performance addressed by the proposed rule and which already typically are subject to disclosure, including aspects of governance, risk and opportunity assessment, and actual or anticipated material financial impact. And, for companies that operate in multiple jurisdictions, particularly Europe and the UK, climate-related disclosure along with enterprise-wide risk and opportunity assessment already is, or is likely to become, mandatory. Excessive focus on the more challenging aspects of the SEC's proposed rule therefore seems, to us, to be a case of missing the forest for the trees, an approach boards should avoid.**