U.S. public issuers assess potential for material financial risks posed by climate rules

Oil and gas companies in U.S. markets are scrutinizing their climate-change policies and disclosures after receiving comment letters from the SEC last September.

***Utah Business* magazine reported in November that the government watchdog is primarily targeting "those in the oil and gas sector."**

The SEC received more than 550 responses, and could issue a climate change proposal as early as 2022.

The sample comment letter from the SEC refers to rules of more than a decade ago, the "2010 Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 (Feb. 2, 2010)."

Through the letter, the SEC is pressuring public companies and serving notice that mandatory ESG rules are on the way, observers say. Companies are preparing in advance of the regulations.

The letter posed the following questions that resonated with publicly traded companies in the oil and gas industry:

1. What anticipated reputational risks may result from operations or products that produce material green house gas emissions?
2. Quantify any material increased compliance costs related to climate change.
3. If material, provide disclosure about your purchase or sale of carbon credits or offsets and any material effects on your business, financial condition, and results of operations.

If the climate proposal were final by 2022, then the SEC would likely schedule an effective date in 2023.

Last year, Chevron Corp. and others urged the SEC to support voluntary standards in the Task Force on Climate-Related Financial Disclosures. The standards take a markets-based approach to disclosing financial risks related to climate regulations.

The U.S. Financial Stability Board created the 2010 guidance for use by companies, banks, investors and government. FSB, an international body, makes recommendations on how to handle systemic risk in the financial sector worldwide. Gensler is a member.

Last year, majors and independents alike urged the SEC to continue to require disclosure of material changes and related financial risk, but to avoid climate change rulemaking.

The Western Energy Alliance and U.S. Oil & Gas Association commented that the SEC should "recognize its lack of statutory authority" to enact climate change regulation.

The American Petroleum Institute stated, "Any effort by the SEC that seeks to impose a major new climate disclosure regime but deviates from the well-established grounding in materiality could raise significant concern about whether the SEC has strayed far beyond its authority to regulate the securities markets."

Chronology of SEC Actions on Climate Change, Financial Risk

- **March 2021** — SEC announces enhanced focus on climate-related risks. The commission opened public comment on whether existing ESG disclosures are adequate in informing investors about known material risks, uncertainties, impacts and opportunities, and whether greater consistency is needed.
- **May** — The SEC Investor Advisory Committee approved recommendations urging the Commission to begin updating reporting requirements to include material, decision-useful environmental, social, and governance (ESG) factors.
- **July** — **Gary Gensler**, SEC chair, said he asked staff to develop a mandatory climate risk disclosure rule proposal for Commission consideration.
- **September** — The SEC sent **comment letters**. A Sept. 22 sample letter asked companies to disclose "the material effects of transition risks related to climate change."
- **December** — Gensler reaffirmed focus on climate disclosures.