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SEC Announces Enforcement Task Force Focused on Climate and ESG Issues: Ballard Spahr

Today, the SEC sent a very clear signal about one of its chief enforcement priorities by [announcing](#) the creation of a Climate and ESG Task Force within the Division of Enforcement. ESG stands for Environmental, Social, and Governance.

Since Allison Herren Lee was named the Acting Chair of the SEC on January 21, 2021, the SEC has repeatedly signaled that Climate and ESG issues and disclosures will be an SEC priority. For instance, on February 1, 2021, the SEC [announced](#) that Acting Chair Lee would have, for the first time, a senior policy advisor solely dedicated to these issues. On February 24, 2021, Acting Chair Lee directed the Division of Corporation Finance to scrutinize disclosures for adherence to the SEC's 2010 guidance on climate change-related disclosures. And just yesterday, the SEC's Division of Examinations announced that in the context of inspections, "emerging risks, including those relating to climate and ESG," will be a priority.

Today's announcement, however, is the most significant sign to date about the seriousness with which the SEC is studying Climate and ESG issues.

By creating a task force within the Division of Enforcement, the SEC is broadcasting that its focus will not solely be on providing climate and ESG guidance to publicly traded companies and SEC registrants, but that it will "regulate through enforcement" by bringing enforcement actions related to these issues. In the past, the Division of Enforcement created a Retail Strategy Task Force (2018), Financial Reporting and Audit Task Force (2013), and the Microcap Fraud Task Force (2013), to name a few. In each instance, the creation of the task force meant a swell of SEC enforcement actions in that area.

The Climate and ESG Task Force will be led by Acting Deputy Director of Enforcement Kelly Gibson—a former Ballard Spahr attorney in Philadelphia—who will oversee a 22-person team drawn from the Division of Enforcement. Ms. Gibson, who was until recently the Regional Director of the Philadelphia Regional Office of the SEC, is no stranger to enforcement actions involving climate and ESG issues.

SEC enforcement actions in this space will likely involve fraud charges under Section 10(b) of the Securities Exchange Act of 1934 (the Exchange Act) and Rule 10b-5 thereunder, Section 17(a) of the Securities Act of 1933, and books and record violations in violation of Section 13 of the Exchange Act.

The SEC's focus on ESG comes as no surprise. Investors, consumers, employees, lenders, and the general public have increasingly focused their attention on the non-financial aspects of an entity's business. This is true for public companies, financial institutions, real estate related entities, investment advisors, broker dealers, municipal securities issuers, and even private companies.

Ballard Spahr has established a cross-disciplinary team to assist clients with all ESG-related issues that may will likely arise. For example:

- We can assist in the development of metrics regarding sustainability, and diversity and inclusion of the workforce;
- We can assist in developing corporate climate strategies to meet ESG goals, positions on racism, immigration, and other social equity and justice issues; and
- Our ESG Working Group addresses corporate governance issues, including board diversity, shareholder proposals, and the direction and flow of political contributions.

Most importantly, in light of the SEC announcement, we have a team of lawyers with the procedural and substantive expertise to counsel our clients with respect to the many disclosure issues that may arise when an entity makes voluntary or compulsory ESG disclosures. Our securities and finance lawyers, aided by our securities enforcement litigators, advise on the best practices regarding disclosure of ESG issues and preparing to meet and address the concerns of governmental regulators.

Our environmental, labor and employment, finance, and real estate lawyers regularly collaborate with our securities lawyers to provide clients with the depth of knowledge and experience necessary to ensure each disclosure is fully compliant with the securities laws, meets the expectations of investors and lenders, and is clearly understandable to all constituencies that may be affected - officers and directors, employees, consumers, investors, lenders, the general public, and the relevant regulators.

Finally, in the event of an inquiry or investigation by a government agency or other investigative body, the ESG's team of long-experienced securities enforcement litigators, again working with the subject matter experts within the ESG Working Group, has the demonstrated ability to bring such inquiries to a positive outcome.

ESG has become a key measure of transparency and performance in all sectors of the economy. Our Working Group not only helps its clients navigate the ESG waters but enables its clients to improve, highlight, and appropriately disclose their ESG issues.

by the Environmental, Social, and Governance Group

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