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# ESG Disclosures

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**Editor's Note: David M. Silk** and **Sabastian V. Niles** are partners and **Carmen X. W. Lu** is an associate at Wachtell, Lipton, Rosen & Katz. This post is based on their Wachtell memorandum.

Earlier this week, the U.S. Securities and Exchange Commission (SEC) **announced** the appointment of Satyam Khanna as its Senior Policy Advisor for Climate and ESG. Mr. Khanna will advise the agency on environmental, social, and governance matters and advance related new initiatives across the SEC's offices and divisions. In addition to prior positions with the SEC, including as counsel to former SEC Commissioner Robert J. Jackson Jr., Mr. Khanna previously served with the Financial Stability Oversight Council at the U.S. Treasury Department and as an advisor to Principles for Responsible Investment (PRI). This latest appointment, together with the Biden Administration's **executive order** issued last week aimed at tackling the climate crisis, indicate a clear shift towards greater regulatory focus and oversight on climate change and other ESG matters.

In the past, the SEC has **declined calls** to implement ESG-specific disclosures, preferring to rely on traditional materiality formulations as the benchmark for disclosures. In the absence of regulatory directives, investors, asset managers and companies have pushed forward with voluntary ESG disclosure frameworks in an effort to generate comparable, decision-useful data that can be used to measure companies' ESG risks, progress and performance. It now appears that U.S. regulators will consider playing a more central role in disclosure practices: the Biden Administration's executive order stated that "[t]he Federal Government must drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector of our economy." Similarly, acting SEC chair Allison Herren Lee has supported a disclosure regime that would ensure that financial institutions produce standardized disclosure of their exposure to climate risks, and it is widely expected that incoming SEC chair Gary Gensler will support ESG-related rulemaking. The SEC's Investor Advisory Committee (some of whose former members are now in the Biden Administration) also last year recommended that the SEC focus on updating reporting requirements to include "material, decision-useful ESG factors," highlighting investor need for such information in connection with investment and voting decisions, the benefits of direct disclosure by issuers, the need to level the playing field between issuers and opportunities to promote the flow of capital to the U.S. markets and domestic issuers of all sizes. The SEC's Asset Management Advisory Committee has also been considering ESG-related matters and potential recommendations.

Across the Atlantic, U.K. and EU regulators have continued to ramp up disclosure requirements. Last week, the United Kingdom's Department for Work and Pensions **announced** that beginning October 2021, pension funds with over £5 billion under management will be required to publish reports in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The EU's Sustainable Finance Disclosure Regulation, which requires banks, asset managers and certain other financial market participants to make disclosures on the integration of sustainability risks into investment decisions, will come into force in March. The European Commission is also reviewing the scope of its Non-Financial Reporting Directive which requires certain large companies to disclose their policies on ESG matters including environmental protection, social responsibility and board diversity. The U.K. Government's independent, global and comprehensive review on the economics of biodiversity commissioned by the

U.K. Treasury—the Dasgupta Review—has also now been published and will accelerate focus on biodiversity-related matters, including as to financial disclosures, capital allocation and accounting and economic theories.

While it remains to be seen what policies and strategies the SEC and other federal regulators will pursue with respect to ESG—and if U.S. regulators will adopt the paths taken by their counterparts in the U.K. and EU—it is evident that the need for standardized, comparable and assurable data, particularly on climate- related risks, has become ever more urgent. The ongoing convergence among the different ESG disclosure frameworks will likely continue to accelerate into 2021. In the meantime, we expect to see continued increase in disclosure by U.S. companies in accordance with Sustainability Accounting Standards Board (SASB) and TCFD recommendations, as well as some early adoption of the Stakeholder Capitalism Metrics released by the World Economic Forum.