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# Mandatory Climate Change Disclosure Rules – A Preview From the SEC Chair?

As noted in our previous memos, the SEC is considering and has sought input from investors on potential new disclosure requirements related to climate change and other sustainability issues. Yesterday, SEC Chairman Gary Gensler made remarks that add some clarity as to what can be expected: a combination of qualitative and quantitative climate-risk disclosures that are consistent, comparable and decision-useful to investors. Examples of potential qualitative disclosures include how the company's leadership manages climate-related risks and opportunities, how such matters impact corporate strategy and, potentially, the use of scenario analyses. Quantitative disclosures may include disclosure of Scope 1, 2 and 3 greenhouse gas emissions, financial impacts of climate change and greater transparency on progress towards climate-related pledges that a company chooses to make, such as "net zero" commitments and alignment with the Paris Agreement. Chairman Gensler also noted the need for greater accountability and disclosure from sustainability-related investment funds.

While Chairman Gensler did not list specific disclosures that might be required, the examples he highlighted hint at the SEC's forward-leaning approach on potential disclosures. It appears clear that some sort of disclosure of Scope 1 and Scope 2 emissions will be required, with advice sought from the staff as to whether Scope 3 should be included. Industry-specific metrics are being evaluated and may be required for certain industries, such as banking, insurance or transportation. The staff has also been asked to consider whether companies should be required to provide scenario analyses on how their business might adapt to the range of possible physical, legal, market and economic changes, such as physical risks associated with climate change or transition risks associated with stated commitments by companies or requirements from jurisdictions. Companies making "net zero" or similar pledges may be asked to provide information standing behind their claims, and the staff will consider what information should be required even from those that have not made such commitments but are subject to the laws of jurisdictions that have committed to the Paris Agreement or similar goals. Finally, the question of where disclosures should (or must) be made remains under active consideration, with Chairman Gensler asking the staff to consider whether they should be filed in the Form 10-K.

While asking the staff to "learn from and be inspired by" external standard setters such as the Task Force on Climate-related Financial Disclosures (TCFD), Chairman Gensler has made clear that he expects the SEC to establish a climate risk disclosure regime that is appropriate for U.S. markets.

We will continue to monitor and provide updates on forthcoming SEC guidance and rules. Chairman Gensler's latest remarks make clear that the SEC is preparing to take a clear stance on climate-related disclosure and enforcement. We continue to expect to see proposed rulemaking as early as year-end.

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