

May 27, 2020

Investor Advisory Committee Urges SEC to Advance Mandatory ESG Disclosures

The U.S. Securities and Exchange Commission's (SEC) Investor Advisory Committee (IAC) has recommended that the SEC begin an "earnest" effort to update reporting requirements to include "material, decision-useful, ESG factors." The IAC recommendation was high level and modest: it neither endorsed any particular disclosure framework nor made any specific prescriptions. Rather, recognizing the growing demand from investors and other market participants for standardized, comparable and reliable ESG data, and concluding that the SEC is best positioned to set a framework, the IAC recommendation calls on the SEC to begin outreach to investors, issuers and other market participants to develop "well-constructed, principles-based reporting." The IAC reasoned that if the SEC does not take the lead with this type of disclosure, it is highly likely that U.S. issuers will be bound to follow standards imposed by other jurisdictions.

The IAC's proposal highlights the SEC's internal debate concerning these types of disclosures. As discussed in our prior memorandum, the SEC has long focused on traditional materiality formulations as the benchmark for disclosures and even recently has declined to drill down to require specific ESG-related disclosures.

It remains to be seen whether the SEC will exercise its authority to accelerate a consensus on ESG disclosure practices. In the meantime, the demand for quality ESG data continues to grow, and the absence of a standardized and comparable ESG disclosure framework remains a challenge for investors, issuers and other stakeholders. Issuers should expect continued pressure from institutional investors and other stakeholders to move forward with substantially expanded voluntary ESG-related disclosures. Private sector efforts to achieve increased standardization and alignment regarding ESG and sustainability-related metrics, including through the World Economic Forum's International Business Council as well as industry and subject-matter specific standards, continue apace.

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