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# SEC Chairman Comments on New Public Company Disclosures

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On June 23, 2021, SEC Chairman Gary Gensler provided commentary on the “2021 Unified Agenda of Regulatory and Deregulatory Actions”. The Agenda includes a list of short- and long-term regulatory actions that the SEC plans on addressing, covering nearly 50 items. In his statements, Chair Gensler focused on three of these items: public company disclosure, market structure and transparency initiatives. Given Chair Gensler’s commentary, public company disclosure will be at the forefront of this Agenda, and CAP expects the SEC to accelerate its rulemaking process with new proposals issued shortly.

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As explained by Chair Gensler, the purpose of this Agenda is “to meet our mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, the SEC has a lot of regulatory work ahead of us... I look forward collaborating with my fellow commissioners and the dedicated staff to propose and finalize rules that will strengthen our markets, increase transparency, and safeguard investors.”

Below, CAP has summarized the items related to public company disclosure items and executive compensation as discussed by Chair Gensler or included in the Agenda.

## Short-Term Agenda Items: Public Disclosure

**Environmental, Social and Governance (ESG) Disclosure:** Based on Mr. Gensler’s comments, and notable rulemaking areas identified by the SEC, new ESG disclosure rules are now a priority. He noted that the SEC has received more than 400 letters from investors on the subject, indicating a clear sentiment for increased disclosures. The following ESG topics are expected to have enhanced disclosure rules:

- **Climate Change** – Chair Gensler asked SEC staff for recommendations on governance, strategy, and risk management related to climate risk. His staff will also be considering specific metrics, namely greenhouse gas emissions, in an effort to see what is most important to investors. The commission is also considering requirements to achieve climate-related specific targets for (i) companies that have made forward-looking climate commitments; or (ii) companies with significant operations in jurisdictions with national requirements.
- **Human Capital** – Chair Gensler mentioned investors have requested a better understanding of company demographics, and as such could propose recommendations that could include specific metrics, including (i) workforce turnover; (ii) skills and development training; (iii) compensation; (iv) benefits; (v) workforce diversity; and (vi) health and safety.
- **Board Diversity** – The Agenda includes enhanced disclosures – on the diversity of board members and potential nominees.
- **Cybersecurity** – Chair Gensler commented on the always changing technological landscape and its relationship with finance through the development of mobile brokerage apps, robo-advising and artificial intelligence. Given the heightened focus on this technology in 2021, due to notable incidents, the Agenda requires disclosures about cybersecurity risk governance.

**Proxy Guidelines:** The SEC is expected to address or amend current proxy rules and potential changes within the following areas: (i) amendments to regulations on proxy voting advice; (ii) allowing shareholder voting altogether by a “universal” proxy card for a contested director election; and (iii) reassessing amendments to shareholder proposals passed in October 2020 which addressed shareholder proposal eligibility, proposal limits per meeting, ownership thresholds, and proponent engagement.

**Executive Compensation:** The SEC is expected to address or amend executive compensation guidelines within the following areas: (i) finalizing clawback rules initially proposed in 2015 requiring companies to disclose their policy and expand the use of clawbacks; (ii) requirements to disclose relationship between pay and performance (i.e., compensation paid and financial performance).

**Insider Trading:** The SEC is expected to address or amend insider trading guidelines within the following areas: (i) mandatory cooling-off periods and disclosure requirements pertaining to Rule 10b5-1, which allows insiders to set up a trading plan for selling stocks that they own, selling predetermined shares at a predetermined time; (ii) modernize and enhance transparency of share repurchase disclosures, including S-K filings or Item 703, which requires the tabular disclosure of share repurchases

## Long-Term Agenda Items

Other relevant items on the agenda with an outlook beyond just the next few months include: (i) possible amendments to improve distribution of proxy materials, shareholder vote processing, and communicating with shareholders (i.e., proxy plumbing issues); and (ii) possible amendments to Form S-8 filings and Rule 701 which exempts certain sales of securities made to compensate employees.

## Other Notable Regulatory Agenda Items, as listed by the SEC

- Market structure modernization within equity markets, treasury markets, and other fixed income markets
- Transparency around stock buybacks, short sale disclosure, securities-based swaps ownership, and the stock loan market
- Investment fund rules, including money market funds, private funds, and ESG funds
- 10b5-1 affirmative defense provisions
- Unfinished work directed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
- Enhancing shareholder democracy
- Special purpose acquisition companies
- Mandated electronic filings and transfer agents



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