GOVERNANCE & ACCOUNTABILITY INSTITUTE'S
TO THE POINT!™
Timely Insights & Perspectives on Corporate Sustainability, Responsibility & Citizenship
EXTRA BACKGROUND

Background 1 of 2 for Issue 3.3 | October 2017
SEC Proposes Important Amendments to Reg FD - Many Changes Are in the Wind
-- But ESG Disclosure Is Not Addressed...

ADDITIONAL BACKGROUND FOR YOU
-- ABOUT THE SEC'S 2016 *CONCEPT RELEASE*

The G&A Institute team prepared a brief for corporate managers and investors in Spring 2016 when the SEC issued the *Concept Release.*

QUESTION WE POSED: Will We See Mandated Corporate Reporting on Sustainability in the USA?

Maybe...U.S. Companies Will Be Required...or Strongly Advised... to Disclose ESG Data & Related Business Information

(Commentary by Hank Boerner - Chairman - G&A Institute)

Some big changes in mandated US corporate disclosure and reporting on ESG factors *may* be just over the horizon...

Sustainable & responsible investing advocates have long called for greater disclosure on environmental and social issues that affect corporate financial performance (in both near and long-term). Their sustained campaigning could result in dramatic changes in the information investors and stakeholders will have available from mandated corporate filings.

We are in countdown mode -- in mid-April 2016 the Securities & Exchange Commission (SEC), the agency that regulates many parts of the capital market operations and especially corporate disclosure and reporting for investors issued a *Concept Release* with a call for public comments.

Among the issues In focus are potential adjustments, expansions and updating of mandated corporate financial reporting. *One of these involves corporate ESG disclosure*. Also - the issue of "materiality" is weaved throughout the Release document.

BACKGROUND

Governance & Accountability Institute shares timely news, insights and perspectives with corporate managers in key topic areas: *corporate citizenship; corporate responsibility; corporate sustainability; community affairs; sustainable investing.*

To the Point! is a fee-based educational resource for corporate executives and managers distributed each month with periodic brief updates for critical items.

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Among the many considerations put forth by SEC: expanding corporate disclosure requirements for corporate financial and business information to include ESG factors, and to further define "materiality." Especially the materiality of ESG factors.

SEC has been conducting a "Disclosure Effectiveness Initiative," which includes looking at corporate disclosure and reporting requirements, as well as the forms of presentation and methods of delivery of corporate information made available to investors. (Such as corporate web site content, which both company managers and investors feel needs to be updated as to SEC guidance.)

The umbrella regulatory framework -- "Regulation S-K" -- has been the dominant approach for corporate reporting since 1977 has been the principal repository (in SEC lingo) for filing corporate financial and business information (such as the familiar 10-K, 10-Q, 8-K, etc.).

Investors Want More Corporate ESG Information

Investment community players have urged SEC to look at mandating - or offering strong guidance - to public company managements to expand disclosure and reporting to substantially address what some opponents conveniently call "non-financial," or "intangible" information.

A growing number of investors feel just the opposite -- ESG information is quite *tangible* and has *definite financial implications* and results for the investor. The key question is: but how to do this?

Reforming & Updating Reg S-K

In December 2013 when the *JOBS Act* ("Jumpstart Our Business Startups") was passed by Congress, SEC was charged with issuing a report [to Congress] on the state of corporate disclosure rules. The goal of the initiative is to improve corporate disclosure and shareholders' access to that information.

The April 2016 *Concept Release* is part of that effort. The SEC wants to "comprehensively review" and "facilitate" timely, material disclosure by registrants and improve distribution of that information to investors. Initially, the focus is on Reg S-K requirements. Future efforts will focus on disclosure related to disclosure of compensation and governance information in proxy statements.

Asset managers utilizing ESG analytics and portfolio management tools cheered the SEC move. In the lengthy *Concept Release - Business and Financial Disclosure Required by Regulation S-K*, at 341 pages, there is an important section devoted to "public policy and sustainability" topics. (Pages 204-215).

ESG / Sustainability in Focus For Review & Action

In the *Concept Paper* SEC states: In seeking public input on sustainability and public policy disclosures (such as related to **climate change**) we recognize that some registrants (public companies) have not considered this information to be *material*. Some observers continue to share this view.

The *Concept Release* poses these questions as part of the consideration of balancing those views with those of proponents of greater disclosure including ESG information:

- Are there specific public policy issues important to informed voting and investment decisions?
- If the SEC adopted rules for sustainability and public policy disclosure, how could the rules result in meaningful disclosures (for investors)?
- Would line items about sustainability or public policy issues cause registrations to disclose information that is not material to investors?
- There is already sustainability and ESG information available outside of Commission (S-K) filings -- why do some companies publish sustainability, citizenship, CSR reports...and is the information sufficient to address investor needs? What are the advantages and disadvantages of these types of reports (such as being available on corporate web sites)?
- What challenges would corporate reporters face if ESG / sustainability / public policy reporting were *mandated* -- what would the additional costs be? (Federal rule making agencies must balance cost-benefit.)
- Third party organizations -- such as GRI and SASB for U.S. company reporting -- offer frameworks for this type of reporting. If ESG reporting is mandated, should existing standards or frameworks be considered? Which standards?

The Commission has received numerous comments about the inadequacy of current disclosure regarding ***climate change matters***. And so the *Concept Paper* asks: Are existing disclosure requirements adequate to elicit the information that would permit investors to evaluate material climate change risk? Why -- or why not? What additional disclosure requirements-- or SEC guidance -- would be appropriate?

Influential Voices Added to the Debate

The subject of expanded disclosure of corporate ESG, sustainability, responsibility, citizenship, and related information has a number of voices weighing in. Among those organizations contributing information and commentary to the SEC are these: **GRI; SASB; Ceres; IEHN; ICCR; PRI; CFA Institute; PWC; E&Y; ISS; IIRC; BlackRock Institute; Bloomberg; World Federation of Exchanges; US SIF**.

The overwhelming view on record now with SEC is that investor consideration of ESG matters is important and that change is needed in the existing corporate reporting and disclosure requirements. You can add your voice to the debate.

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For Your Action
We urge your reading of the *Concept Release*, particularly the pages 204 through 215, to get a better understanding of what is being considered, especially as proposed by proponents; and, encourage you to weigh in during the open public comment period with your views.

You can help to ensure the SEC commissioners, staff and related stakeholders understand the issues involved in expanding corporate disclosure on ESG matters and how to change the rules -- or offer strong SEC guidance. Let the SEC know that ESG information is needed to help investors better understand the risks and opportunities inherent in the ESG profiles of companies they do or might invest in.

SEC rules or strong guidance on ESG disclosure would be a huge step forward in advancing sustainability and ESG consideration by mainstream capital market players.

INFORMATION SOURCES

- Link to the *Concept Release* text: https://www.sec.gov/rules/concept/2016/33-10064.pdf