

Corp Fin Director Highlights the Need for Tailored Brexit Disclosures and Principles-Based Sustainability Disclosures

March 2019

Authors: [Era Anagnosti](#), [Colin Diamond](#), [Dov Gottlieb](#), [Michelle Rutta](#), [Danielle Herrick](#)

In his March 15, 2019 speech¹ at the 18th Annual Institute on Securities Regulation in Europe, William Hinman, Director of the Securities and Exchange Commission's ("SEC") Division of Corporation Finance ("Corp Fin"), addressed the importance of well-crafted disclosure on topics relevant to investors, specifically with respect to Brexit and sustainability. He emphasized that disclosure should allow investors "to understand how management is positioning the company in the face of uncertainties" and provide them with material, company-specific information about risk and risk-mitigation plans.

Brexit

Given the complexity of, and the uncertainty surrounding, Brexit, Hinman stated that generic disclosures are "insufficient to guide investors in a meaningful manner." He praised those companies, especially foreign private issuers which may be more directly affected by Brexit, that have provided tailored disclosure addressing different possible outcomes and decisions they must make to mitigate associated risk. Hinman concluded that "investors are better served by understanding the lens through which each company's management looks at its exposure," achieved through disclosure "provid[ing] tailored insight into how management views the risks posed to the business and operations and what actions they are taking to address these risks."

Hinman shared a non-exclusive list of specific topics companies should consider, if applicable, when crafting their Brexit disclosure, similar to the questions Corp Fin may ask when reviewing a company's Brexit-related disclosures:

- Exposure to new regulatory risks given the uncertainty of the legal regime applicable during and after a transition period, with an emphasis on financial services businesses, biopharmaceutical companies and the airline industry;
- Significant supply chain risks in case, for example, of disruption to the UK's access to free trade agreements with other nations;

¹ The full text of the speech is available [here](#).

-
- Material risk of losing customers, experiencing a decrease in sales or an increase in costs due to tariffs or other factors;
 - Foreign currency exchange impact, including a change in demand for products sensitive to exchange rates or changes in tariffs;
 - Exposure to contractual risk if renegotiation or termination of material contracts may be required in light of Brexit; and
 - Financial statement disclosures, such as inventory write-downs, long-lived asset impairment, collectability of receivables, fair value measurement assumptions, hedge accounting or income taxes.

Sustainability

Hinman acknowledged the importance of sustainability disclosures to investors and other market participants. Despite a growing desire for more specific disclosure requirements, he expressed concerns over this approach as potentially expensive for the reporting companies, and not effective in delivering the type of material information market participants are seeking. Citing that “the very breadth of these issues illustrates the importance of a flexible disclosure regime designed to elicit material, decision-useful information on a company-specific basis,” he expressed his belief that the marketplace evolution of disclosure should be allowed to continue to provide market participants with a “continued opportunity to sort out the types of information they find useful.”

In preparing sustainability disclosures, Hinman advised companies to focus on allowing investors to see the company “through the eyes of management,” including providing insight into how management plans to mitigate material risks and how such decisions could impact the business and investors, and suggested “evaluating the disclosure relative to the disclosure that management provides to the board.” He also pointed out that Corp Fin “actively compare[s]” the information companies voluntarily provide outside of their SEC filings with the filed disclosure[s], so companies should pay careful attention to ensure such disclosures are in conformity with one another.

On the topic of sustainability, Hinman underscored that the SEC’s 2010 guidance² on disclosure issues related to climate change is still relevant. Noting that the guidance does not address the board’s risk management role in this area, he pointed to the disclosure requirements under Item 407(h) of Regulation S-K and Item 7 of Schedule 14A and advised that, “[t]o the extent a matter presents a material risk to a company’s business, the company’s disclosure should discuss the nature of the board’s role in overseeing the management of that risk.”

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020-1095
United States
T +1 212 819 8200

White & Case LLP
701 Thirteenth Street, NW
Washington, District of Columbia 20005-3807
United States
T +1 202 626 3600

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.

² Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 (Feb. 8, 2010) [75 FR 6290], available [here](#).