California AG wants SEC to 'use its regulatory authority' on climate change

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The Securities and Exchange Commission (SEC) needs to draw on its regulatory authority and make companies disclose both their risks to climate change and impacts on it, California Attorney General Rob Bonta told The Hill's Equilibrium.

Bonta is one of 14 Democratic state attorneys general who are calling for the government's corporate watchdog to establish a standard for firms when it comes to disclosing climate risk — part of a larger debate among investors, businesses and policy makers about how best to incorporate environmental, social and corporate governance (ESG) concerns into the market.

Such disclosures, the attorneys wrote in response to the SEC's request for public comment, "are essential not only to the SEC's mandate to protect investors but also to ensure efficient capital formation and allocation."

The agency has since closed the comment period, but SEC Chairman Gary Gensler, a Biden appointee, has consistently signaled interest in taking up ESG issues.

At a conference on financial regulation in London last week, Gensler said he has "asked staff to consider the ways that funds are marketing themselves to investors as sustainable, green, and 'ESG' and what factors undergird those claims."

Republicans decry such efforts as a back door means to shunt capital away from fossil fuel companies and toward renewable energy firms — to "pick winners and losers," as Jennifer Schulp, director of financial regulation studies at the Cato Institute, wrote in the conservative think tank's public comment to the SEC.

In an area where scientific and social consensus has advanced rapidly, Schulp wrote, mandatory "disclosure requirements have the potential to quickly become outdated or misleading." Combine that with the added cost of reporting and certification, she argued, and the result might be a net negative.

Bonta disagrees. Such disclosures, he and his fellow attorneys general wrote, “are essential not only to the SEC’s mandate to protect investors but also to ensure efficient capital formation and allocation.”

State attorneys general often press the SEC to take action on a range of issues, and California has been a leader on climate regulation, from launching the country’s largest carbon offset market to establishing a Climate Investment Framework last year that aims to evaluate climate risk for the state’s three largest pension funds.

But a lack of climate disclosure standards, Bonta told Equilibrium, makes it near-impossible to get everyone on the same page. He now wants to see the SEC fix that.

Below is a Q&A with Bonta. Some of the questions and answers have been edited for brevity and clarity.

Equilibrium: So what do you feel like is specifically missing from the current disclosure regime … and what would you like to see?

Bonta: Details, depth, dimension, comprehensiveness. It's very cursory, what is provided now. It really fails to produce the transparency best needed to give an investor anything significant to review, consider and evaluate.

The disclosure of information is too minimalist and too cursory, and we are asking that there be a real review of these risks when it comes to climate change.

What is the risk of flood? What is the risk of wildfires? From hurricanes? Extreme weather? From sea rise? From drought? Tell us, tell your consumers. If you don't know, look and determine it. And then share it.

Because that is a risk to your financial well-being. And that is a material piece of information that your investors should know about.

So, really, it's been insufficient and inadequate up to now, and we're asking that disclosures be more robust and actually something that investors can evaluate and use to consider making their investments.

Are you approaching this as one government agency advising another, or are you asking the SEC to put more enforcement options on the table for you guys?

We're asking the SEC to use its regulatory authority and power to require corporations to disclose more information about their climate risks. We don't necessarily think that this is going to provide us with opportunities to take action. We have our laws and our own rules, but we think the SEC has an important role.

We often — we meaning the attorneys general working in coalition — ask federal agencies, federal regulators, federal departments and other government entities to do things that are within their authority and their power to support the people of our respective states.

Is it climate disclosures that you're seeking, or are you more broadly seeking climate and ESG disclosures?

We see it as climate, but it's broadly defined when it comes to the different ways that climate change, extreme weather events can impact your assets and the bottom line of a corporation. So it's fairly broad, what we see as climate change.

What is the minimum that you need to see happen?

It would be different for every company. I think that's why it's a little bit hard to provide a single template.

Basically there's little to no disclosure that is of any relevance, or materiality or substance when it comes to the impact of climate change on the financial health of corporations.

We're asking that they provide the substance and material on their own — and that they look across the whole supply chain and identify the different risks of climate change, and how it applies to their business model.

It could be different for different companies. If you have assets that are off-shore, then sea rise will impact you. If you have a supply chain that is subject to flood or tsunamis, or super typhoons — show us that.

So it's different in terms of how it applies to those companies, but it requires the company to disclose the realities of climate change, its threats that climate change has to its business model and to tell their investors.

Is there something that's regulated in a similar way or requires similar disclosures?

I think any type of risks or material disclosures that companies need to make.

Are they highly leveraged … in that they are taking on tons of loans? Are they cash-strapped? Have they had losses in the past? The key asset that they had a patent for an intellectual property, did it get challenged?

Rules around material disclosure and tons of aspects...are regulated, and they need to be not hiding material information, they need to be sharing their real financial position, their risks and the other assets.

So [climate disclosure] is just exactly in line with the reason that the SEC exists — why corporations are regulated and the duties and obligations of corporations have to disclose material information to their investors.

So, I find nothing at all different, unique or exotic about requiring the financial risk of climate change to be included as a material risk to be disclosed to investors.