

INSIGHTS

Key ESG Takeaways From Bracewell Fireside Chat With CFTC and SEC Commissioners

June 15, 2022

On June 2, 2022, in Bracewell's Washington D.C. office, Bracewell and Women in Derivatives (WIND) hosted two commissioners from the nation's top market regulators, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC), for a wide-ranging discussion that included climate change risks for financial markets. Bracewell Partner Anne Termine moderated the session with CFTC Commissioner Caroline Pham and SEC Commissioner Hester Peirce and focused the conversation on how their respective agencies are tackling climate change through their regulatory structures. The Commissioners also addressed recently proposed SEC climate disclosure rules, the role of the CFTC in developing carbon offset markets, and their mutual desire to hear directly from market participants. The following are the key takeaways from each commissioner on these important issues.

SEC Commissioner Hester Peirce:

1. Addressed the SEC's recently proposed climate-related disclosures rule, expressing the concern that such a requirement may become a "slippery slope" for the agency. Commissioner Peirce suggested that passage of this rule could lead to future disclosure requirements in a whole host of other areas.
2. Expressed concern with the rule as it is currently written and questioned whether this was the best way to manage climate change. She questioned whether the agency should be using its regulatory powers to shape companies' behavior with respect to climate change.
3. Noted that there is no need for special guidance, referencing recent SEC enforcement action against companies for their misstatements and omissions in their climate-related disclosures as an example of adequate agency action. She indicated that the agency should explore other ways to address climate-related risks that might be more impactful than the proposed rule.
4. Reminded the WIND audience that the comment period for this rule was extended to June 17, 2022. Although the deadline is fast approaching, she noted there is still time to provide input. Commissioner Peirce encouraged individuals and companies to consider providing specific feedback, if not through a formal comment letter, then through meetings with individual SEC Commissioners.

5. Based on Commissioner Peirce's statements, companies who may be impacted by the proposed rule – which includes non-public companies, should consider submitting a letter with comments on the specifics of the rule that are the most concerning. At a minimum, and as suggested by Commissioner Peirce, schedule a meeting with individual SEC Commissioners to discuss concerns directly.

CFTC Commissioner Caroline Pham:

1. Focused her comments on climate-related risks around the Voluntary Carbon Markets Convening held the same day at the CFTC. The Convening was an agency-led exploratory session that involved multiple discussion panels with a variety of carbon market stakeholders. Discussions centered around the carbon offset market and CFTC's potential role in furthering the development of and establishing standards and guidelines for the market.
2. Noted that the carbon offset market is a spot market and questioned whether it be appropriate for the CFTC to oversee such a market given its role as a regulator of *derivatives* markets and its limited resources.
3. Mentioned potential legislation being proposed that would grant CFTC regulatory authority over the digital asset spot markets. When questioned whether such authority could be extended to cover additional spot markets, like the voluntary carbon offset markets, Commissioner Pham suggested that it would not be a stretch for the CFTC to obtain regulatory authority over another unique spot market.
4. Queried whether the CFTC's rules and regulations allowed for similar climate-related disclosures like those proposed by the SEC, but she did not rule out the possibility.
5. Emphasized the CFTC's Request for Information on Climate-Related Financial Risk, published that day, which seeks industry feedback on, among other things, necessary data on climate-related financial risk, risk management changes to address climate risks, product innovation in the space, and potential disclosures requirements for CFTC registrants. Commissioner Pham requested stakeholders to submit comments that will particularly assist the CFTC in exploring ways to minimize complex climate-related requirements and harmonize them with rules that already exist.