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House Passes Bill to Require ESG Disclosures

On June 16, 2021, the U.S. House of Representatives passed a bill that would require public companies to annually disclose and describe how environmental, social, and governance (ESG) metrics affect their business strategy.

The House narrowly approved the ESG Disclosure Simplification Act of 2021 (the "Act") by a 215 to 214 vote.[1] In support of the Act, the House authors noted that the Securities and Exchange Commission ("SEC") does not currently require companies to publicly disclose information related to ESG metrics, or to adhere to any particular standards when making such disclosures. In addition, the House authors noted that ESG matters are material to investors and a rule requiring reporting and standardization of ESG disclosures would, therefore, be in investors' interests.

If signed into law, the Act would direct the SEC to (1) modify disclosure rules to require a public company to disclose ESG metrics in any filing that requires audited financial statements and (2) define "ESG metrics." The Act would authorize the SEC to incorporate "internationally recognized, independent, multi-stakeholder [ESG] standards" when developing the new disclosure requirements.

In addition, the Act would require public companies to disclose in their annual proxy statements:

- A clear description of the company's views about the link between ESG metrics and its long-term business strategy, and
- A description of any process the company uses to determine the impact of ESG metrics on its long-term business strategy.

The Act would also require the SEC to establish a permanent advisory committee to be called the Sustainable Finance Advisory Committee ("SFA Committee"). Within 180 days after its first meeting, the SFA Committee would be required to recommend to the SEC which ESG metrics would be subject to mandatory disclosure.

Meridian comment. The House passed the Act along partisan lines and the Senate vote will likely adhere closely to partisan lines as well, making passage far from certain. The Act reflects the Biden administration's intention to require public companies to broadly describe the effect of ESG metrics on business operations. Separately, the passage of the Act could increase the pressure on public companies to use ESG metrics in their incentive and performance plans.

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[1] The Act is included as Title I of the larger Corporate Governance Improvement and Investor Protection Act. See H.R.1187 – 117th Congress (2021-2022). https://www.congress.gov/117/bills/hr1187/BILLS-117hr1187rfs.pdf.

Apart from the Act, the SEC is also considering the imposition of prescriptive disclosure requirements on ESG matters. SEC Chair Gary Gensler has expressed his intent for the SEC to propose new disclosure requirements on climate change and human capital by October 2021.[2] See Meridian Client Update dated June 18, 2021. Consequently, regardless of whether the Act is passed, companies should anticipate new rules and guidance regarding ESG disclosures in the near future.

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[2] SEC's Spring 2021 Regulatory Flexibility Agenda and SEC Chair Gary Gensler, "Testimony Before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee" (May 26, 2021). https://www.sec.gov/news/testimony/gensler-2021-05-26.