

SEC's New Climate Disclosure Rules Face Legal Challenges

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Earlier this month, the United States Securities and Exchange Commission ("SEC") finalized a long-awaited rule that mandates climate-related disclosures by public companies and in public offerings. See [here](#). The SEC's rule is already facing legal challenges, including a recent ruling that temporarily blocks the rule from taking effect.

Background

The SEC first provided guidance on climate-related disclosures in 2010. That guidance recommended that affected registrants include general information about climate change-related risks and opportunities in disclosures related to the registrant's business description, risk factors, legal proceedings, and management discussion. According to the SEC, climate-related risk disclosures made pursuant to this guidance were fragmented and inconsistent and companies provided most of their climate-related information outside of Commission filings.

To address these concerns, the SEC issued a proposed rule in March 2021 seeking to impose more robust climate disclosures (the "*Proposed Rule*"). The Proposed Rule would have required registrants to disclose specific information on climate-related risks and the impact of climate-related events and transition activities on the registrant's financial statements. The Proposed Rule also called for disclosure of greenhouse gas ("*GHG*") emission metrics that could help investors assess climate risks, including the registrants' direct GHG emissions (Scope 1), indirect GHG emissions from purchased energy sources (Scope 2), and GHG emissions from upstream or downstream in a registrant's value chain (Scope 3) if such emissions are material or where the registrant has set goals related to Scope 3 emissions. The SEC considered over 22,000 comments (its most ever) before issuing a final rule.

Final Rule

The final rule, entitled *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (the "*Final Rule*"), requires that companies provide significant new climate-related disclosures in their annual reports and registration statements. The requirements in the Final Rule, however, roll back some of the disclosures included in the Proposed Rule, specifically with respect to GHG emissions disclosures.

The Final Rule's requirements track with the Task Force on Climate-Related Financial Disclosures (TCFD) and require disclosure of climate-related risks. More particularly, the Final Rule calls for disclosure of, among other things:

- (i) climate-related risks that have had or are reasonably likely to have a material impact on the registrant;
- (ii) the registrant's activities and strategies to mitigate, adapt or manage climate risks;
- (iii) oversight by the company's board of directors of climate-related risks and the role of management in assessing and managing such risks;
- (iv) the process the registrant uses to assess and manage climate risks;
- (v) any targets or goals that have materially affected or are reasonably likely to materially affect the registrant's business, results of operations, or financial condition; and
- (vi) the effects of severe weather events and other natural causes on the company's financial statements.

Unlike the Proposed Rule, which provided for the disclosure of Scope 1 and Scope 2 emissions for all filers, the Final Rule requires the disclosure of Scope 1 and Scope 2 emissions *only* for certain larger registrants and *only* when those emissions are material. Large and accelerated filers that are not otherwise exempted will have to disclose material Scope 1 and Scope 2 emissions along with an attestation report on a phased-in basis. Notably, the SEC refrained from requiring the disclosure of Scope 3 emissions for any registrant in the Final Rule. The Final Rule will create a new subpart 1500 of Regulation S-K and Article 14 of Regulation S-X.

Legal Challenges

The Final Rule is facing multiple challenges in federal courts across the country from states, affected companies, and environmental groups. A coalition of ten states almost immediately filed a lawsuit alleging that the Final Rule exceeded the Commission's statutory authority and placed an undue burden on affected companies. Several additional states, industry groups, and independent companies followed with their own lawsuits on similar grounds. Environmental groups are also challenging the SEC for issuing a rule that does not go far enough, alleging that the Final Rule allows companies to "selectively report" climate risks.

On Friday, the Fifth Circuit Court of Appeals issued an emergency administrative stay of the Final Rule, temporarily blocking the SEC's disclosure requirements from taking effect in a lawsuit brought by Liberty Energy. The SEC challenged the emergency order, noting that many of the disclosure requirements would not come into effect until 2026 or 2027. The petitioners; however, successfully argued that the disclosures would be based on 2025 data that companies are already putting systems in place to collect.

Although the fate of the Final Rule and the timing of its implementation remains to be seen pending judicial review and the upcoming presidential election, climate disclosure is almost certainly here to stay. Many large and multi-national companies are already gathering information regarding climate disclosures not only to comply with the SEC's requirements, but also to meet investor demand as well as to ensure compliance with climate disclosure requirements recently implemented under the European Union's *Corporate Sustainability Reporting Directive* ("CSRD") and the State of California's *Climate Corporate Data Accountability Act* ("CCDA"). Reporting obligations under these requirements will undoubtedly trickle-down to the supply chain as both the CSRD and CCDA require disclosure of Scope 1, Scope 2 and Scope 3 emissions.

For More Information

We are available at any time to answer questions, discuss scenarios, and provide guidance. If you would like further information concerning the matters discussed in this article, please contact Kristin Parker or the Chapman attorney with whom you regularly work.

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