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Update: U.S. SEC Votes to Drop Defense of Climate Disclosure Rules

This client alert is an update to an alert published on March 8, 2024, about the U.S. Securities and Exchange Commission's (SEC) decision to narrow its climate disclosure rule based on public comments. A link to that alert can be found here.

On March 27, the SEC voted to end its defense of its rules requiring that companies disclose climate-related risks and greenhouse gas (GHG) emissions (Climate Disclosure Rules).

The Climate Disclosure Rules were adopted in a final rule by the SEC on March 6, 2024, and required public companies (Registrants) to make certain disclosures related to climate change in their SEC filings on a phased-in basis beginning with fiscal year 2023 for certain filers, and fiscal years 2024 and 2025 for others. Among other requirements, the Climate Disclosure Rules required that certain Registrants provide information on material Scope 1 emissions (direct emissions from company operation) and Scope 2 emissions (emissions from purchased energy) to the extent material and file an attestation report prepared by an expert third party verifying the accuracy of that information. The Climate Disclosure Rules also required Registrants to disclose climate-related risks that have had or are reasonably likely to have an impact on their business and business strategy, quantitative and qualitative steps taken to mitigate those risks, information about any climate-related goals that may affect the business, and expenses related to weather events, carbon offsets and renewable energy credits, among other disclosures.

Multiple states and parties challenged the Climate Disclosure Rules upon their promulgation in March 2024, and that litigation was consolidated in the Eighth Circuit (*Iowa* v. SEC, No. 24-1522 (8th Cir.)), after which the SEC stayed the effectiveness of the rules pending the outcome of the litigation. The SEC then launched its defense of the Climate Disclosure Rules in August 2024, arguing that the required disclosures would provide "information directly relevant to the value of investments."

After the recent March 27 vote, the SEC notified the court that it was withdrawing its defense of the Climate Disclosure Rules. Acting SEC Chairman Mark T. Uyeda stated that "the goal of today's Commission action and notification to the court is to cease the Commission's involvement in the defense of the costly and unnecessarily intrusive climate change disclosure rules."

Additionally, Paul Atkins, a former SEC commissioner under the George W. Bush administration and the current Trump administration nominee for the next SEC chairman, has been publicly critical of the Climate Disclosure Rules, penning a 2022 opinion column in *The Wall Street Journal* urging the SEC to "retract and rethink its planned disclosure rule" and opining that it is an unlawful expansion of the SEC's statutory authority.

Commissioner Hester Peirce has likewise lodged public criticism of the Climate Disclosure Rules. Peirce's critique of the rules includes the argument that existing SEC rules already require disclosure of material climate risks, that "some of the proposed disclosure requirements apply to all companies without a materiality qualifier," that the rules "will not lead to comparable, consistent, and reliable disclosures," that the SEC lacks authority to enforce the rules, and that the SEC has underestimated the costs of compliance to companies.

Commissioner Caroline Crenshaw, on the other hand, released a statement just after the SEC announced it would halt its defense of the rule on March 27, arguing that the SEC's actions in determining to abandon the rule are "inconsistent with the [Administrative Procedure Act], historical practice, and [that] they embody bad governance." Crenshaw also stated that "we are apparently letting the Climate-Related Disclosure Rule stand but are withdrawing from its defense in court." Crenshaw argues that the proper action for the SEC to take in this case is to either continue defending the rules or seek a stay of the litigation while the agency promulgates a new rule it is willing to defend.

While it appears highly unlikely that the Climate Disclosure Rules will go into effect, companies should be aware of other climate-related disclosure requirements to which they may be subject. Notably, companies doing business in California and reporting over $1 billion in gross annual revenue must already comply with California's climate-related financial disclosure laws, SB 235 and SB 261. California's laws, which have been in effect since October 7, 2023, have more stringent requirements than do the Climate Disclosure Rules and subject reporting entities to reporting scope three emissions (reporting of indirect upstream and downstream GHG emissions). Approximately 4,700 companies will be subject to California's climate-related financial disclosure laws. A link to our alert on these California laws can be found here.

Additionally, U.S. companies doing business in the European Union (EU) must consider the EU's climate disclosure rules. These rules add an additional measure of uncertainty due to the European Commission's proposal to simplify them with a rarely used omnibus bill (EU Omnibus). The existing EU rules include (i) the Corporate Sustainability Reporting Directive (CSRD), in force since July 2024, which requires that companies disclose, among other social issues, information on their environmental impact, including GHG emissions; (ii) the Corporate Sustainability Due Diligence Directive, which requires companies to consider the environmental and social impact of company operations and implement climate transition plans (EU member states have until 2026 to adopt this rule into law); and (iii) the EU Green Taxonomy, a classification system designed to clarify which economic activities are sustainable and to prevent greenwashing, which has been in force since 2020. Non-EU-based companies with EU operations (those with branches in the EU with a balance sheet exceeding €25 million or an annual turnover of €40 million) that generate more than €150 million in revenue from the EU and companies with securities listed in EU-regulated markets must comply with these rules.

The EU Omnibus would remove 80 percent of companies from the scope of the CSRD, postpone the reporting requirements for companies set to report in 2026 and 2027 by two years, and allow companies to report on a voluntary basis using reporting standards created by the EU's standards body, among other proposed changes. If passed, reporting under the EU Omnibus would only apply to U.S. companies with an EU turnover of at least €450 million and at least one large EU subsidiary or branch (those exceeding two out of three of the following: (i) balance sheet of €25 million, (ii) turnover of €50 million, (iii) 250 employees) generating a net turnover of at least €50 million. While Republican members of the U.S. Congress have voiced opposition to the EU's climate disclosure rules generally, it remains unclear whether the Trump administration plans to make loosening the EU's rules as applied to U.S. companies the subject of bargaining in its expanding trade war.

A link to the SEC's press release on the March 27 vote and notification to the Eighth Circuit can be found here.

Links to Paul Atkins' 2022 opinion column in The Wall Street Journal, Commissioner Hester Peirce's statement and Commissioner Caroline Crenshaw's statement can be found, here, here and here, respectively.

A link to the European Commission's press release on the EU Omnibus can be found here.

Links to the *Federal Register* pages for the narrowed climate disclosure rule (published March 28, 2024) and the delay of the narrowed climate disclosure rule's effective date (published April 11, 2024), respectively, can be found here and here. A link to a list of the Climate Disclosure Rules on the SEC's website can be found here.

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