March 8, 2024

# U.S. SEC Votes on Narrowed Climate Disclosure Rule – 10 States Immediately File Legal Challenges

On March 6, the U.S. Securities and Exchange Commission (SEC) voted 3-2 to approve a narrowed version of a rule titled "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (the Climate Disclosure Rule). The Climate Disclosure Rule will require registrants (public companies and companies that have more than $10 million in total assets and a class of equity securities, like common stock, that is held of record by either (1) 2,000 or more persons or (2) 500 or more persons who are not accredited investors) to make disclosures related to climate change. The SEC proposed its first iteration of the Climate Disclosure Rule in March 2022, which would have mandated three categories of disclosure from registrants: (1) a narrative outlining their climate-related financial risks, (2) reporting of greenhouse gas (GHG) emissions, and (3) a financial statement note regarding the financial impacts of climate change (the 2022 Proposed Rule). The 2022 Proposed Rule outlined obligations for the disclosure of three categories of GHG emissions: (1) Scope 1 emissions, which pertain to registrants' direct emissions; (2) Scope 2 emissions, which relate to indirect emissions stemming from the production of energy consumed by registrants; and (3) Scope 3 emissions, which encompass the indirect emissions generated by registrants' value chain. The SEC encountered considerable pushback from industry with respect to the 2022 Proposed Rule, especially concerning the Scope 3 emission disclosure requirements. As adopted, the Climate Disclosure Rule omits the Scope 3 emission disclosure requirements. The SEC said it dropped the proposed Scope 3 emission disclosure requirements because of the feedback received in the public comments, which raised concerns about reporting costs for registrants and nonpublic companies in registrants' value chain and about the reliability of the information underlying Scope 3 emissions. As adopted, the Climate Disclosure Rule requires registrants to disclose:

- Climate-related risks that could reasonably have a material impact on their operations, financial condition or business strategy.
- The potential and actual impacts of identified climate-related risks on registrants' business strategy, outlook and operational model.
- A quantitative and qualitative description of any steps taken to mitigate or adapt to climate-related risks.
- The role, if any, of the board of directors and managers of registrants in managing and evaluating material climate-related risks.
- Their processes, if any, for assessing, identifying and managing material climate-related risks and, if those risks are being managed, how they are integrated into overall risk management.
- Information on any climate-related goals or targets, which have materially affected or are reasonably likely to materially affect their business.
- For large accelerated filers (LAFs) and accelerated filers (AFs), which are not otherwise exempted, information on material Scope 1 and/or Scope 2 emissions.

- For registrants required to disclose Scope 1 and Scope 2 emissions, an assurance report (meaning verification of accuracy) at the limited assurance level, which, for an LAF, following an additional transition period, will be at the reasonable assurance level.
- Capitalized costs, charges, expenses and losses from severe weather events and other weather-related conditions, disclosed in a note to the financial statement subject to relevant disclosure thresholds.
- Capitalized costs, losses and expenses related to renewable energy credits and carbon offsets if used as a material component of a registrant's plans for achieving climate-related goals or targets, disclosed in a note to the financial statement.
- If the registrant's estimates and assumptions used to make financial statements were materially impacted by uncertainties and risks associated with severe weather events or other weather-related conditions or any disclosed climate-related transition plans or targets, a qualitative description of how the development of such estimates and assumptions was affected, disclosed in a note to the financial statements.

The Climate Disclosure Rule will be published in the *Federal Register* and will become effective 60 days following publication. The compliance dates for the Climate Disclosure Rule are fiscal year (FY) 2023 for LAFs, FY 2024 for AFs and NAFs (non-accelerated filers), and FY 2025 for SRCs (smaller reporting companies). Immediately following the SEC's vote on March 6, a coalition of 10 states (West Virginia, Georgia, Alabama, Alaska, Indiana, Oklahoma, South Carolina, Wyoming, Virginia and New Hampshire) filed a challenge to the Climate Disclosure Rule in the U.S. Court of Appeals for the Eleventh Circuit. The appeal challenges the Climate Disclosure Rule as exceeding the SEC's statutory authority and otherwise as being arbitrary, capricious, an abuse of discretion and not in accordance with the law. A copy of the 10-state petition to override the SEC's decision on the Climate Disclosure Rule can be foundhere. If your organization is subject to SEC disclosures and requires compliance advice regarding the Climate Disclosure Rule, please reach out to one of the attorneys listed in the sidebar.

# Authors


## Kirstin M. Etela

### Partner

Hartford, CT | (860) 275-0206

ketela@daypitney.com

## Brianna E. Tibett

### Associate

Hartford, CT | (860) 275-0141

btibett@daypitney.com

## Max D. Matt

### Associate

Hartford, CT | (860) 275-0105

mmatt@daypitney.com

## Todd W. Terhune

### Partner

Parsippany, NJ | (973) 966-8040

tterhune@daypitney.com

## Harold M. Blinderman

### Partner

Hartford, CT | (860) 275-0357

hmblinderman@daypitney.com

## Drew A. Levinson

### Senior Associate

Parsippany, NJ | (973) 966-8051

dlevinson@daypitney.com