SEC ISSUES LONG-AWAITED CLIMATE RISK DISCLOSURE RULE

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US Policy and Regulatory Alert

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INTRODUCTION

On Wednesday, 6 March 2024, the Securities and Exchange Commission (SEC) approved its highly anticipated final rules on "The Enhancement and Standardization of Climate-Related Disclosures for Investors" by a vote of 3-2, with Republican Commissioners Hester Peirce and Mark Uyeda dissenting. Accompanying the final rules was a press release andfact sheet detailing the provisions of the rulemaking. The final rules will go into effect 60 days after publication in the Federal Register and will include a phased-in compliance period for all registrants.

This is likely to be one of the most consequential rulemakings of Chairman Gary Gensler's tenure given the prioritization of addressing climate change as a key pillar for the Biden administration. However, given the significant controversy associated with this rulemaking effort, the final rules are likely to face legal challenges and congressional oversight in the coming months. As such, it remains unclear at this point whether the final rules will survive the forthcoming scrutiny.

WHAT IS IN THE RULE?

According to the SEC's fact sheet:

- "The final rules would require a registrant to disclose, among other things: material climate-related risks; activities to mitigate or adapt to such risks; information about the registrant's board of directors' oversight of climate-related risks and management's role in managing material climate-related risks; and information on any climate-related targets or goals that are material to the registrant's business, results of operations, or financial condition;
- Further, to facilitate investors' assessment of certain climate-related risks, the final rules would require disclosure of Scope 1 and/or Scope 2 greenhouse gas (GHG) emissions on a phased-in basis by certain larger registrants when those emissions are material; the filing of an attestation report covering the required disclosure of such registrants' Scope 1 and/or Scope 2 emissions, also on a phased-in basis; and disclosure of the financial statement effects of severe weather events and other natural conditions including, for example, costs and losses; and
- The final rules would include a phased-in compliance period for all registrants, with the compliance date dependent on the registrant's filer status and the content of the disclosure."

NEXT STEPS

The final rules are likely to face significant opposition, including legal challenges and congressional oversight. It is expected that there will be various lawsuits brought against the final rules, which are likely to receive support from several industry groups, or potentially GOP-led state attorneys general who have been active in litigating against environmental, social and governance (ESG) policies and regulations. It is also possible that the final rules could face criticism from some climate advocates that the SEC did not go far enough in its disclosure requirements.

Further, it is expected that the House Financial Services Committee (HFSC) will conduct oversight hearings, as well as introduce a resolution under the Congressional Review Act (CRA), to attempt to block the regulations from taking effect. HFSC Chairman Patrick McHenry (R-NC) indicated that the Oversight and Investigations Subcommittee will hold a field hearing on March 18 and the full Committee will convene a hearing on April 10 to discuss the potential implications of the rules. If a CRA resolution were to pass the House and garner sufficient support from moderate Democrats in the Senate to pass, it would likely be vetoed by President Biden.

Ultimately, the SEC climate risk disclosure rules are unlikely to significantly change the trajectory of corporate disclosures made by multinational companies based in the U.S., most of whom have already been making sustainability disclosures in accordance with the Financial Stability Board's Task Force on Climate-Related Financial Disclosures. The ongoing problem for investors is that such disclosures are not standardized and therefore are not comparable. Consequently, many of these large issuers may continue to enhance their sustainability disclosures in accordance with standards issued by the International Sustainability Standards Board and the Global Reporting Initiative as an investor relations imperative notwithstanding the SEC's timetable for implementation of these final rules.

A more detailed analysis of the SEC rules is forthcoming from our Corporate and Asset Management and Investment Funds practices in the coming days.

RELATED RESOURCES

To learn more about the current state of ESG in American public policy, as well as the firm's role in this space, please visit our previous publications, including:

- "The EU CS3D Trilogue Nears Conclusion";
- "California Enacts Landmark ESG Legislation";
- "GOP ESG Bills Await US House Floor Consideration";
- "The ESG Debate Heats Up: State AGs Investigating Asset Manager Involvement in ESG Initiatives and Related Proxy Voting";
- "ESG Investing and Proxy Voting: DOL's New Final Rule";
- "SEC Adopts Final Rule Requiring Additional Proxy Voting Disclosures";
- "Déjà Vu All Over Again: SEC Reverses 2020 Proxy Rules Changes and Proposes Shareholder Proposal Rule Changes";
- "SEC Takes First Step Toward Standardized ESG Disclosures for Funds and Investment Advisers";

- "SEC Issues Climate-Related Risk Disclosure Rule Proposal";
- "2023 ESG State Legislation Wrap Up"; and
- "Biden Administration ESG Activity Accelerates".

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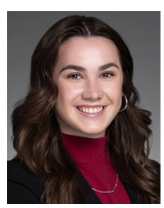

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