

SEC Climate-Related Disclosure Rules Are Put on Ice

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As [we previously reported](#), in 2022 the US Securities and Exchange Commission (the "SEC") proposed rules to require issuers to provide information about climate-related risks and metrics in registration statements and annual reports. On March 6, the [SEC adopted the final rules](#) or the Final Rule for the Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Climate-Related Disclosure Rule").

The Rules

The Climate-Related Disclosure Rule would affect both domestic issuers and foreign private issuers (filing on Form 20-F), but will not apply to Canadian issuers that use the MJDS and file their Exchange Act registration statements and annual reports on Form 40-F.

Compliance dates for the Climate-Related Disclosure Rule were to be phased in for all issuers, with the compliance date dependent on the issuer's filer status. The earliest effective dates would start with reporting on 2025 information in 2026, with additional delays for smaller companies and greenhouse gas emissions disclosures.

The Climate-Related Disclosure Rule required registrants to disclose:

- Climate-related risks that have had or are reasonably likely to have a material impact on the registrant's business strategy, results of operations, or financial condition
 - The actual and potential material impacts of any identified climate-related risks on the registrant's strategy, business model, and outlook
 - If, as part of its strategy, a registrant has undertaken activities to mitigate or adapt to a material climate-related risk, a quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions that directly result from such mitigation or adaptation activities
 - Specified disclosures regarding a registrant's activities, if any, to mitigate or adapt to a material climate-related risk including the use, if any, of transition plans, scenario analysis, or internal carbon prices
 - Any oversight by the board of directors of climate-related risks and any role by management in assessing and managing the registrant's material climate-related risks
 - Any processes the registrant has for identifying, assessing, and managing material climate-related risks and, if the registrant is managing those risks, whether and how any such processes are integrated into the registrant's overall risk management system or processes
 - Information about a registrant's climate-related targets or goals, if any, that have materially affected or are reasonably likely to materially affect the registrant's business, results of operations, or financial condition. Disclosures would include material
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expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or actions taken to make progress toward meeting such target or goal

- For large, accelerated filers ("LAFs") and accelerated filers that are not otherwise exempted, information about material Scope 1 emissions and/or Scope 2 emissions
- For those registrants required to disclose Scope 1 and/or Scope 2 emissions, an assurance report at the limited assurance level, which, for an LAF, following an additional transition period, will be at the reasonable assurance level
- The capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, subject to applicable one percent and de minimis disclosure thresholds, disclosed in a note to the financial statements
- The capitalized costs, expenditures expensed, and losses related to carbon offsets and renewable energy credits or certificates (RECs) if used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals, disclosed in a note to the financial statements
- If the estimates and assumptions a registrant uses to produce the financial statements were materially impacted by risks and uncertainties associated with severe weather events and other natural conditions or any disclosed climate-related targets or transition plans, a qualitative description of how the development of such estimates and assumptions was impacted, disclosed in a note to the financial statements.

Immediate Response by Various States

At least ten states filed suit shortly after the rule was finalized. Environmental advocates also considered challenging the rule.

The 5th Circuit Issues a Stay

On March 15, 2024, the US Court of Appeals for the Fifth Circuit granted an administrative stay on the Climate-Related Disclosure Rule. The petition for the administrative stay requested interim relief while the court continues to review the legal challenges.

In support of the stay, the petitioners contended that the SEC lacked the authority to enact such regulations, asserting that addressing climate change falls under the purview of the US Environmental Protection Agency, not the SEC. Additionally, they argued that the regulations were arbitrary and capricious and violated the First Amendment by mandating contentious disclosures about climate change.

In response, the SEC opposed the stay, arguing that the alleged harms were not immediate as the regulations had not yet been formally published and would not require disclosures before March 2026 at the earliest. The SEC maintained that the regulations fell within its authority to require disclosure of information pertinent to investors and were consistent with its prior exercise of that authority.

The stay was the first strike against the SEC in what appeared to be a protracted battle over the rule as lawsuits with similar arguments work their way through courts.

The SEC Issues a Stay

Following the Fifth Circuit issuing its stay, all challenges were reassigned to the Eighth Circuit. The SEC had nine legal challenges consolidated into one venue.

On April 4, 2024, the SEC issued an order staying the Climate-Related Disclosure Rule and the stay will remain in place until the completion of litigation filed in the federal courts that challenges the agency's authority to adopt these rules.

The SEC said it would continue “vigorously defending” the validity of its climate rule and believes that it had acted within its authority to require disclosures important to investors. A stay would “allow the court of appeals to focus on deciding the merits.”

The situation is similar to the problems faced by registrants upon the adoption of the Conflict Minerals Rules which were also challenged on First Amendment grounds. In that case, the obligation to file a Form SD continued but a core component and the requirement for a private sector audit was invalidated by the courts.

It is possible that a similar result will develop with the Climate-Related Disclosure Rule, where citing First Amendment grounds, parts of the rule will be invalidated, and parts will remain.

Uncertainty

Uncertainty looms ahead, particularly given the presidential elections in the US, and combined with extended compliance deadlines, it could cause some companies to take a wait-and-see approach to the litigation.

Issuers will have to prepare for the required disclosure *on some level* while waiting for updates.

Of course, many issuers already voluntarily disclosed similar information and companies are already collecting data and climate-related information to comply with similar rules in other jurisdictions, such as California and the European Union, which recently moved ahead with their own disclosure requirements. California’s rule has also been challenged in a court proceeding.

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