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Regulatory Update

SEC Proposes to Formally Rescind Climate-Related Disclosure Rules

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On May 29, the Securities and Exchange Commission proposed to formally rescind its final rules on climate-related disclosure. The proposed rescission is just the latest development in the SEC's climate-related disclosure saga, which has been hotly contested since the rules were first proposed in 2022. While the proposed recission of the rules is generally viewed as salutary by public companies, multiple other regulatory disclosure frameworks continue to apply to many of them, which is one of the reasons that the proposed shelving of the SEC's climate disclosure rules has been welcomed.

The What and the Why

If adopted, the proposal would rescind the final rules in their entirety. The SEC argues that there are two independent bases for the recission of the final rules:

- The adoption of the final rules exceeded the SEC's statutory authority.
- The final rules are unsound from a policy perspective.

The proposal includes a lengthy discussion regarding the scope of the SEC's authority, including an overview of its statutory mandate pursuant to federal securities laws, the limitations on its ability to regulate corporate governance matters which are traditionally left to the states and the constraints on its ability to act in the public interest. The SEC then discusses its four major policy reasons for rescinding the final rules, irrespective of its authority.

The Saga to Date

This step in the climate-related disclosure debate is years in the making:

Date	Action
March 21, 2022	The SEC issued sweeping proposed rules mandating climate-related disclosures, which was met with widespread pushbacks and elicited over 22,500 comment letters (including 4,500 unique letters).
March 6, 2024	The SEC issued final pared-down climate-related disclosure rules, followed by the filing of a host of suits in different circuits challenging the new rules.
March 15, 2024	The Fifth Circuit granted a petition for administrative stay of the climate rules as interim relief.

March 21, 2024	The Judicial Panel on Multidistrict Litigation consolidated the challenges in the Eighth Circuit.
April 4, 2024	The SEC stayed the effectiveness of the rules pending the outcome of the pending litigation.
February 11, 2025	Acting Chairman Mark Uyeda directed the SEC Staff to request that the court not schedule the case for argument.
March 27, 2025	The SEC voted to cease defending the rules, formally withdrew its defense and ceded its oral argument time back to the court.
April 24, 2025	The Eighth Circuit issued an order to hold the case in abeyance pending further order of the court and directed the SEC to file a status report disclosing its plans for the rules within 90 days, including whether it "intend[ed] to review or reconsider" them.
July 23, 2025	The SEC informed the Eighth Circuit that it did not intend to review or reconsider the rules at such time and requested that the court proceed.
September 12, 2025	The Eighth Circuit issued an order holding the petitions in abeyance until the SEC reengaged in rulemaking or elected to renew its defense of the rules.

Why All the Fuss

The final climate disclosure rules issued by the SEC in March 2024 consisted of more than 850 pages and introduced a standardized regime under which public companies were required to disclose their climate-related impacts and risks. Required disclosures included, among other things:

- Material climate-related risks and their impact on the registrant's business.
- Activities to mitigate or adapt to such risks and material expenditures incurred for such activities.
- Information about the registrant's board of directors' oversight of climate-related risks and management's role in managing material climate-related risks.
- The registrant's processes for identifying, assessing and managing material climate-related risks.
- Information on any climate-related targets or goals that are material to the registrant's business, results of operations or financial condition.
- Any costs, expenditures, charges and losses incurred as a result of severe weather events or related to certain carbon offsets and renewable energy credits.

Additionally, larger registrants were required to disclose certain information related to Scope 1 and/or Scope 2 greenhouse gas emissions, to the extent that such emissions are material, and provide varying levels of assurance reports on such disclosure. These requirements would now be fully rolled back.

Business as Usual

Although registrants will be spared the SEC's climate disclosure regime, the ecosystem of regulators and jurisdictions addressing climate risks is significant, and public companies should be mindful of the other regulatory frameworks to which they are subject as well as their current disclosure obligations under federal securities laws.

Current SEC Disclosure Obligations

Under companies' existing SEC disclosure obligations, climate-related disclosure may be required if material to a particular company (i.e., whether a reasonable investor would consider the information important in buying or selling company securities). To that end, in the proposal, the SEC directs companies to its 2010 Guidance, which discusses the most significant nonfinancial statement disclosure rules that may require climate-related disclosures, including:

- Item 101, Description of business
- Item 103, Legal proceedings
- Item 105, Risk factors
- Item 303, MD&A

Companies have been applying this analysis to their climate-related disclosures for over a decade and frequently making supplemental disclosure in sustainability reports, as appropriate to meet investor demand and company-specific policy goals, or in compliance with other mandated disclosures or disclosure regimes. Most companies provide focused climate-related disclosure in their SEC filings, noting material themes expanded upon in their sustainability reports.

Other Mandated Climate-Related Disclosure Regimes

Companies must consider the applicability of international and state-level reporting and disclosure regimes. For example, companies "doing business" in California and exceeding certain revenue thresholds will need to publicly disclose their greenhouse emissions and prepare climate risk reports in accordance with the state's recently enacted emissions reporting law (SB 253) and climate-related financial risk reporting law (SB 261), which are subject to ongoing litigation. One lawsuit was filed by a coalition led by the U.S. Chamber of Commerce, the other by Exxon Mobil. Following an injunction granted by the Ninth Circuit, enforcement of SB 261 remains stayed until a ruling on the merits of the plaintiffs' First Amendment claims. However, the California Air Resources Board has approved initial regulations implementing SB 253 and SB 261. Additional regulations for Scope 3 reporting, future reporting dates and other topics are expected to be published in the future. Under SB 253, reporting of Scope 1 and 2 emissions for covered entities is due Aug. 10, 2026.

The SEC's proposed recission does not directly affect the litigation in California. However, the plaintiffs may take this opportunity to argue that California is compelling a certain type of costly speech in an area where the federal government has withdrawn the rules and expressed concerns. If California's climate-related reporting requirements survive the legal challenges, companies could more narrowly focus on the requirements of SB 253 and SB 261.

In the European Union, the amended Corporate Sustainability Reporting Directive requires in-scope companies to disclose (i) plans (including implementing actions and related financial and investment plans) to ensure their business model and strategy are compatible with the Paris Agreement goals and (ii) information necessary to understand the companies' impact on sustainability matters and how such matters affect the group's development, performance and position. Sustainability matters can include climate change to the extent this is considered to be material by the in-scope company. If the company does not consider climate change to be material, a detailed explanation should be provided as to why this is the case, including a forward-looking analysis of the conditions that could lead the undertaking to conclude that climate change is material in the future.

The United Kingdom requires listed and large private companies to publish climate-related financial disclosures. Certain other jurisdictions such as China and Australia mandate disclosures based on the IFRS International Sustainability Standards Board Standard 1 and Standard 2. These requirements seek disclosure of information relating to climate change that is material both to investors and capital markets.

Climate-related disclosure requirements seem destined in the immediate future to be governed by a patchwork of state (and foreign) reporting requirements instead of a federal standard. The proposed recission of the SEC rules still leaves companies with the need to navigate this patchwork.

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