

April 5, 2024

SEC Stays Climate-Related Disclosure Rules for Public Companies Pending Judicial Review

On April 4, 2024, the Securities and Exchange Commission (“SEC”) issued an [order](#) (the “Stay Order”) staying its [climate-related disclosure rules](#) for public companies (the “Final Rules”) “pending the completion of judicial review” of the petitions challenging the Final Rules filed in six different circuit courts,¹ which have been consolidated for review by the U.S. Court of Appeals for the Eighth Circuit. Among other reasons, the SEC noted that a stay “will facilitate the orderly judicial resolution of those challenges and allow the court of appeals to focus on deciding the merits” and “avoids potential regulatory uncertainty if registrants were to become subject to the Final Rules’ requirements during the pendency of the challenges to their validity.”² The SEC further stated that, in issuing the Stay Order, it “is not departing from its view that the Final Rules are [. . .] within the [SEC’s] long-standing authority” and “will continue vigorously defending the Final Rules’ validity in court.”³

The SEC adopted the Final Rules on March 6, 2024. The Final Rules, if effective, would significantly expand the climate-related information that U.S. public companies and foreign private issuers (other than Canadian issuers reporting on Form 40-F) would be required to disclose in their periodic reports and registration statements.⁴

Shortly after the SEC adopted the Final Rules, two energy companies, several energy trade associations, groups of state attorneys general and the U.S. Chamber of Commerce, as well as climate advocacy groups, filed petitions to review the rules in the Second, Fifth, Sixth, Eighth, Eleventh and District of Columbia Circuits. On March 15, 2024, the U.S. Court of Appeals for the Fifth Circuit granted one group of petitioners’ motion for an administrative stay of the Final Rules, temporarily halting their implementation. On March 21, 2024, the day after the Judicial Panel on Multidistrict Litigation issued an order consolidating the petitions in the Eighth Circuit, the Fifth Circuit ordered the dissolution of its administrative stay in connection with the transfer of the petitions before it to the Eighth Circuit.

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Following the consolidation of the challenges in the Eighth Circuit, on March 26, 2024, several petitioners asked the Eighth Circuit to stay the Final Rules.⁵ The SEC issued the Stay Order after its motion⁶ to establish a consolidated briefing schedule encompassing all filed and pending stay motions met with opposition from 31 petitioners, who urged the court to expedite briefing on the motions.

There is significant uncertainty regarding the timing and process pursuant to which the Eighth Circuit will act on the consolidated petitions before it. This creates additional challenges for companies subject to the Final Rules, many of which had already commenced their efforts to become compliance-ready by January 1, 2025. The Stay Order does not amend or otherwise modify the compliance dates contemplated by the Final Rules. As a result, if the Final Rules are upheld, whether or how the phase-in and compliance schedules would be modified are uncertain at this point. In addition, other climate-related reporting requirements remain in place. For example, the Stay Order noted that the SEC's 2010 guidance on climate-related disclosures, which the SEC has referenced in a number of recent comment letters questioning climate-related information included in companies' SEC filings, will be in effect while the Stay Order is in place.⁷ Many companies are also subject to climate-related disclosure requirements in other jurisdictions, such as [California's climate disclosure laws](#) and the [EU's Corporate Sustainability Reporting Directive](#).

Furthermore, it remains to be seen what actions the SEC will take in connection with other rulemaking proposals on its [latest published regulatory agenda](#) involving environmental, social and governance (ESG) topics. For example, the SEC is continuing to consider comments on another [proposal](#) that would impose, among other requirements, additional disclosure obligations on ESG funds, including requiring "ESG-Focused Funds" that consider environmental factors as part of their investment strategies to disclose the Scope 1 and 2 greenhouse gas emissions associated with their portfolio investments, normalized by net asset value and by portfolio revenue, and Scope 3 greenhouse gas emissions to the extent reported by their portfolio companies ("ESG Fund Proposal"). Given the overlap between key elements of the Final Rules and the ESG Fund Proposal, the Stay Order raises the question of whether the SEC will finalize the ESG Fund Proposal during the pendency of the legal challenges on the Final Rules.

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ENDNOTES

- 1 See *Liberty Energy Inc. v. SEC*, No. 24-60109 (5th Cir. filed Mar. 6, 2024); *West Virginia v. SEC*, No. 24-10679 (11th Cir. filed Mar. 6, 2024); *Louisiana v. SEC*, No. 24-60109 (5th Cir. filed Mar. 7, 2024); *Tex. All. of Energy Producers v. SEC*, No. 24-60109 (5th Cir. filed Mar. 11, 2024); *Nat. Res. Def. Council, Inc. v. SEC*, No. 24-707 (2d Cir. filed Mar. 12, 2024); *Iowa v. SEC*, No. 24-1522 (8th Cir. filed Mar. 12, 2024); *Sierra Club v. SEC*, No. 24-1067 (D.C. Cir. filed Mar. 13, 2024); *Ohio Bureau of Workers' Comp. v. SEC*, No. 24-3220 (6th Cir. filed Mar. 13, 2024); and *Chamber of Commerce of U.S. of Am. v. SEC*, No. 24-60109 (5th Cir. filed Mar. 14, 2024).
- 2 Stay Order at p. 3.
- 3 Stay Order at p. 2.
- 4 For further information on the Final Rules, see our Client Memorandum: "Key Implications of SEC's Climate-Related Disclosure Rules for Public Companies" (March 12, 2024), available at <https://www.sullcrom.com/SullivanCromwell/Assets/PDFs/Memos/Key-Implications-SEC-Climate-Related-Disclosure-Rules.pdf>. A recording of our webinar on the Final Rules, hosted on March 13, 2024, is available at <https://www.sullcrom.com/insights/videos-and-podcasts/2024/March/SEC-s-Final-Climate-Rules-for-Public-Companies-Key-Requirements-and-Takeaways>.
- 5 On March 26, 2024, the two energy companies asked the Eighth Circuit to grant their emergency motion for an administrative stay and a stay pending judicial review based on the briefing completed in the Fifth Circuit, while a group of trade organizations that includes the U.S. Chamber of Commerce filed a separate motion for a stay.
- 6 The SEC's March 29, 2024 motion to establish a consolidated briefing schedule requested that: (1) the Eighth Circuit direct that motions for a stay of the Final Rules be filed no later than April 5, 2024; (2) the SEC's consolidated response to all such motions be due April 26, 2024; and (3) that any reply briefs be due no later than May 10, 2024.
- 7 Stay Order at p. 3.

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