

INSIGHTS

Update on Securities and Exchange Commission's Landmark Proposed Climate-Change Disclosure Rulemaking

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Things to Consider

Rulemaking

1. Coordinate closely with trades to ensure their comments reflect concrete information about impracticability and cost; these make a difference in the admin record upon judicial review
2. Trade associations and industry groups are taking the lead on advocacy.
3. Opposition primarily has been limited to Republicans, likely limiting the ability to affect the proposal through political pressure.

Subject Matter and Staff Readiness

1. Carefully inventory existing climate-, ESG-, and sustainability-related disclosures, statements, commitments, and repositories of knowledge relative to climate issues, emissions, and strategies; gap spot relative to the SEC proposal so you know where some of your talent and resources will need to be deployed
2. Line up your A-Team of internal leaders and external advisers (auditors, ESG advisers, lawyers) to ensure you're in the mix as the industry evolves its thinking on the hard stuff
3. Recognize that the SEC proposal is just that – a proposal – and while the final rule will almost certainly differ from the proposed rule in important ways, expect a final rule to be at least directionally similar – be thinking deeply about how you would go about complying with the proposed version while remaining nimble around specific approaches that are subject to change

4. Calculating and reporting on emissions is hard; developing and communicating business strategies that are adequately informed by climate risks, existing and future requirements, and energy transition issues is harder – identify and task a diversely multidisciplinary team to think and engage deeply and creatively on your company's trajectory in a carbon-constrained world

Governance

1. As part of elevated governance around ESG, immediately review the current timetable and direction of your 2022/23 voluntary ESG reporting; adjust it as appropriate or it will steam forward without regard for the consequences under the proposal
2. Implement policies for commercial contracts that align with company ESG policies and procedures (1 and 2 as applicable), ensure contracts contain appropriate/relevant protections and risk allocation, review outstanding contracts, and consider revisions when appropriate.
3. Ensuring governance and compliance policies and procedures are aligned and take into account the proposed rules for each stage of the process, coordinating with critical departments and team members.

Litigation

1. Maximize prevention by ensuring all public facing statements regarding climate, sustainability, the transition and other ESG matters are coordinated, consistent and align with the governance and compliance
2. Advocacy may be limited by concerns of being “anti-transparency” or “anti-information sharing;” effective advocacy will need to balance concerns and communicate impacts of a complex and highly specialized issue.