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Survey: Companies Preparing to Comply with SEC's Proposed Climate Disclosure Rule Even Though Not Final

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By Jason Halper
Partner and Co-Chair | Global Litigation

By Sara Bussiere
Special Counsel | Global Litigation

According to a new survey, most large companies are preparing to comply with the Securities and Exchange Commission's (SEC) **proposed climate disclosure rule** even though it is not final, but many business leaders are concerned about having adequate resources to do so. Workiva and PwC surveyed 300 executives at U.S.-based public companies with at least $500 million in annual revenue. The resulting report, "**Change in the Climate**," released earlier this year, revealed that most companies already have implemented some environmental, social, and governance (ESG) reporting and plan to voluntarily disclose ESG data, but "are not yet fully prepared to meet the expected disclosure requirements" of the new rule.

The proposed disclosure rule has been the subject of **substantial commentary** since it was introduced last year. In short, it would **require companies** to include certain climate-related information in their registration statements and periodic reporting (e.g., Form 10-K), including climate-related risks and opportunities and their actual or likely financial or operational impacts; governance concerning risks and opportunities arising from climate change; greenhouse gas emissions data, which in certain cases would be subject to third-party assurance; and climate targets and goals, and green transitions plans, if any. The SEC received so many comments on the proposed rule—nearly 15,000—that the agency pushed back the release of the final rule until April, which, the SEC has **signaled**, may reflect changes from the initial proposal based on the comments.

The "Change in the Climate" report indicates that 89% of companies responding already are reporting some ESG data, and 70% of executives responded that they will commence compliance regardless of when the regulation is finalized. Nearly all executives surveyed said they will obtain independent third-party assurance (a requirement in the proposed rule for Scope 1 and Scope 2 emissions data) to manage risk and meet the rule's requirements, whether required by the final rule or not. According to the survey, 70% of executives responded that they already use independent assurance and would continue to do so.

Nonetheless, companies anticipate significant compliance costs and challenges. Appropriate technology was by far the greatest concern. Nearly all (97%) of those surveyed acknowledged that technology will play an important role in climate assessment and disclosure, but most (85%) also responded that their organizations currently lack that technology. The concern seems to be well placed, considering that nearly one-third (32%) of respondents state that their company is not currently utilizing technology to assist with their ESG reporting, and only 40% report that their company has made any investment in ESG reporting technology.

The situation appears similar in terms of human resources, with 36% of the executives indicating that they do not believe their companies are staffed appropriately to meet the rule's requirements. Cost was also a concern, with more than half (61%) saying they believe compliance with the SEC rule, whenever effective, will cost upwards of $750,000 in the first year, which is more than the $640,000 estimate provided by the SEC. More than a quarter (27%) of respondents estimate spending more than $1 million on compliance.

Taking the Temperature: Like most climate-related issues in the U.S., the SEC's proposed climate disclosure rule has engendered controversy and sparked threats of litigation. As we previously reported, Patrick McHenry, the Chair of the House Financial Services Committee, announced the establishment of a nine-person Republican ESG Working Group to "combat the threat to our capital markets posed by those on the far-left pushing environmental, social, and governance (ESG) proposals." In a February 22 letter to SEC Chair Gary Gensler, McHenry, Tim Scott (Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs) and Bill Huizenga (Chairman of the Subcommittee on Oversight and Investigations of the House Committee on Financial Services) asserted that the SEC lacks authority to issue the proposed rule.

But existing regulations in Europe and Asia and, arguably, current disclosure requirements under U.S. securities laws already require disclosure of certain of the information covered by the proposed rule. The proposed rule, like disclosure regimes that have been implemented in other jurisdictions, adopts many of recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD"). Therefore, companies with operations outside of the United States likely already are in the process of or preparing to collect, analyze, and report on information that is subject to the SEC rule. With respect to existing U.S. reporting requirements, some commentators contend that existing materiality-based disclosure requirements are adequate to cover climate change issues, obviating the need for specific climate guidance. However, as we have indicated, whatever the content of the final SEC rule, the current Chair and Staff have articulated their views on required disclosure, and companies ignore that guidance at their peril, at least with respect to the many "traditional" areas of corporate operations and performance addressed by the proposed rule and which already typically are subject to disclosure, including aspects of governance, risk and opportunity assessment, and actual or anticipated material financial impact.