Published on *The National Law Review* https://natlawreview.com

Court Temporarily Stays New SEC Climate Change Disclosure Rules Amidst Widening Legal Challenges

Article By:

Louis Rambo

Jonathan E Richman

Frank Zarb

Multiple legal challenges have already been launched against the SEC's new climate change disclosure rules. Plaintiffs include Attorneys General from several states, a large business trade organization and a private energy company. To date, these suits span across six different federal courts, and the array of these challenges is expected to trigger a lottery process in which one court would handle a consolidated case addressing all the claims.

Two interesting developments last week include a temporary stay of the rules by the U.S. Court of Appeals for the Fifth Circuit in response to a petition by an energy company, and a lawsuit by environmental group Sierra Club seeking to broaden rather than invalidate the new rules.

In March 2022, the SEC published proposed climate change disclosure rules that would require, among other things, the disclosure of certain emissions-related information, categorized in three tiers: Scope 1, Scope 2 and Scope 3 emissions. Scope 1 emissions are direct emissions from sources owned or controlled by a reporting company; Scope 2 emissions are indirect emissions from electricity, steam, heat and cooling purchased by the reporting company and Scope 3 emissions are upstream and downstream emissions by the reporting company's third-party vendors, customers and the like. The rules as adopted in 2024 retained Scope 1 and 2 disclosure requirements for some of the covered public companies, but dropped requirements for Scope 3 disclosures.

The Sierra Club in its challenge seeks to broaden the scope of the new rules, rather than invalidate them. Filing in the D.C. Circuit, the Sierra Club has asked for a review of the rules to determine whether the Scope 3 emissions reporting requirements were improperly excluded from the final rule.

On March 15th, 2024, the Fifth Circuit granted a temporary stay of the rules pending its consideration of the energy company's request for a permanent stay that would last for the course of the litigation. Inasmuch as the rules are not effective yet and will not require additional disclosure until reporting companies' 2026 fiscal years, when companies file annual reports for their 2025 fiscal years, the court's grant of the temporary stay could signal its disposition toward granting a longer stay, but of course the ultimate outcome remains uncertain.

While more challenges to the new rules are anticipated, companies should continue to focus on their internal procedures and related operational adjustments necessary to comply with the new rules' mandate. It is at this stage far from clear that any of the challenges will result in either a long-term stay of effectiveness of the new rules or outright invalidation before they take effect. We will continue to monitor current and future challenges to keep public companies, investors and the public at large apprised as to developments.

Wilderness Castillo-Dobson and Marina Edwards also contributed to this article.

National Law Review, Volume XIV, Number 78