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## SEC's Climate Disclosure Rule Update\*

As previously reported by BCG, in March 2022, the Securities and Exchange Commission (SEC) issued a proposed rule to require publicly traded companies to include certain climate-related disclosures in their SEC filings, such as registration statements and periodic reports (the "Climate Disclosure PR"). Under the Climate Disclosure PR, public issuers would need to include information about climate-related risks that are reasonably likely to have a material impact on the issuer's business, results of operations, or financial condition. After two years of anticipation, on March 6, 2024, the SEC published a final rule that adopts many of the proposed requirements included in the Climate Disclosure PR, with some significant changes (the "Climate Disclosure FR").

Some of the more significant issues addressed in the Climate Disclosure FR are discussed below. Institutions can read the Climate Disclosure FR in its entirety on the SEC's website at <https://www.sec.gov/news/press-release/2024-31>. Note that, as discussed below, there has also been some litigation regarding the Climate Disclosure FR.

**Disclosure of Scope 1 and 2 Emissions.** Under the Climate Disclosure FR, companies must calculate and disclose information regarding their greenhouse gas emissions in various SEC disclosures. The Climate Disclosure FR organizes the types of greenhouse gas emissions subject to disclosure into two categories: (i) Scope 1 emissions; and (ii) Scope 2 emissions. Scope 1 and Scope 2 emissions generally capture emissions that result from the direct activity of the issuer or indirectly through sources that are owned or controlled by the issuer. For instance, this could include emissions from company-owned or company-controlled machinery or vehicles.

**Scope 3 Emissions not Covered.** Notably, the Climate Disclosure FR does not require companies to disclose greenhouse gas emissions from what the Climate Disclosure PR defined as "Scope 3 emissions." Scope 3 emissions would have included other indirect emissions not accounted for in the Scope 1 or Scope 2 emissions. As an example, the Climate Disclosure PR indicated that Scope 3 emissions would likely include emissions from companies that the company provides debt or equity financing to (referred to as "financed emissions"). In other words, emissions from companies that a financial institution makes a loan to were initially proposed to be subject to disclosure as a Scope 3 emission. In the supplementary information to the Climate Disclosure FR, the SEC stated that it decided not to adopt a provision requiring the disclosure of Scope 3 emissions due to the potential costs and difficulties related to reporting Scope 3 emissions. Therefore, disclosure of Scope 3 emissions will remain voluntary.

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**Effective Date and Compliance Dates.** The Climate Disclosure FR becomes effective 60 days after publication in the Federal Register, which as of the drafting of this Newsletter had not occurred. While the rule technically becomes effective 60 days after publication, the Climate Disclosure FR sets forth phased-in compliance dates for its various disclosures, based on whether the company qualifies as a large accelerated filer (LAF), accelerated filer (AF), SRC, EGC, or non-accelerated filer (NAF).

**Court and SEC Halt Implementation of Climate Disclosure FR.** However, on March 6, 2024, Liberty Energy, Incorporated, Nomad Proppant Services, LLC and a number of other states and business groups (the “Petitioners”) filed a petition in the U.S. Court of Appeals for the Fifth Circuit seeking to invalidate the Climate Disclosure FR. On March 15, 2024, the 5th Circuit granted the Petitioners request for an administrative stay of the Climate Disclosure FR until the court considers the lawsuits challenging these rules. *Liberty Energy, Inc. v. SEC*, 2024 U.S. App. LEXIS 6322 (5th Cir. Mar. 15, 2024). The 5th Circuit did not explain its reasoning behind the order so it is not clear why the court decided to grant the order in favor of the Petitioners. Nonetheless, on April 4, 2024, the SEC issued an order indicating it would stay implementation of the Climate Disclosure FR for all registrants pending the court’s decision in the Liberty Energy case (Stay Order). The SEC indicates that a Stay Order will avoid the potential regulatory uncertainty if registrants were to become subject to the Climate Disclosure FR during the pendency of the challenge to their validity. Therefore, the Climate Disclosure FR is on hold for now.

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