The SEC Retreats from Mandating Climate-Related Disclosures

by Kenneth J. Warren*

Our nation's 250th anniversary is a time to celebrate. By forming a constitutional republic governed by democratic institutions and limited by individual rights, "we the people" established a foundation for representative democracy that distinguishes our nation from monarchies and authoritarian regimes. Nevertheless, our celebration is tempered by the recognition that our citizens have serious policy disagreements, our economic gains have not equally benefited all citizens, and our historic racial divides have not been eliminated.

Today Congress is largely frozen by these divisions. Without clear Congressional direction, the regulatory pendulum can swing widely when Presidential Administrations change.

How we regulate, or fail to regulate, climate disruption is a case in point. Recission of the greenhouse gas (GHG) endangerment finding, withdrawal from the Paris Agreement, proposed recission of the GHG reporting rule, termination of some offshore wind farm projects and renewable energy subsidies, removal of our deep-ocean monitoring system, and promotion of coal and other fossil fuels are among the steps the Trump Administration has taken to reverse the climate policies of its predecessors. Strikingly, on May 29, 2026, the Securities and Exchange Commission (SEC) moved to rescind rules that require registrants to provide specific climate-related information in their registration statements and annual reports.

The Current SEC Climate-Related Disclosure Rules

In the April 8, 2022 edition of The Legal Intelligencer, this column discussed the March 21, 2022 SEC proposal to promulgate detailed requirements for disclosure of climate-related information. On March 6, 2024, the SEC adopted the proposed 2022 rules with modifications. These rules are designed to standardize and centralize reporting of GHG emissions and climate risks, thereby allowing investors to compare climate-related risks among companies.

As adopted, the rules require disclosure of a registrant's climate-related risks reasonably likely to have a material impact on its business strategy or results of operations or financial conditions. Activities to mitigate or adapt to these risks and board of directors' oversight of climate-related risks must also be disclosed. The rules further require the registrant's financial statement notes to disclose the financial effects of severe weather events and any material impact of risks and uncertainties.

In addition, the rules require large registrants to report their material, direct GHG emissions (Scope 1) and indirect emissions from purchased energy (Scope 2). Unlike the 2022 proposed rules, the final rules did not require registrants to report emissions from upstream and downstream activities in a registrant's value chain such as the company's suppliers or users of products or services (Scope 3).

These disclosure rules have never gone into effect. The Judicial Panel on Multidistrict Litigation consolidated petitions for review in the U.S. Court of Appeals for the Eighth Circuit. The SEC stayed the rules during judicial review. Then in March 2025, following a change in administrations, the SEC determined it would no longer defend the rules, and the court held the case in abeyance. The SEC now proposes to rescind the rules in their entirety.

SEC Proposal to Rescind its Climate-Related Disclosure Rules (Recission Proposal)

To justify rescinding the rules, the SEC asserts that they exceed its statutory authority and codify unsound policy. But as the Recission Proposal acknowledges, Congress intended a registrant to disclose information important to an investor regarding the registrant's business, operation and performance, financial condition, and management and control. When climate risks constitute material information, *i.e.,* information a reasonable investor would consider important when making an investment decision, the risks must be disclosed. The issue of the SEC's authority thus hinges on whether Congress allowed the SEC to issue detailed regulations aimed at a specific risk such as climate change.

The Recission Proposal notes that disclosure of climate risks was not among the specific disclosures for registrants mandated by Congress. Yet Congress gave the SEC authority to add disclosures to those Congress enumerated where "necessary and appropriate in the public interest or for the protection of investors." In the SEC's current view, any additional, substitute, or more detailed disclosure requirements must be related to the registrant's business or financial characteristics, not to detailed climate impacts. According to the Recission Proposal, specific climate metrics such as GHG emissions are not sufficiently similar to the type of business or financial information Congress expressly authorized.

The Recission Proposal seeks to eliminate even those requirements in the rules expressly subject to a materiality limitation. For example, it notes that the requirement to disclose material Scope 1 and Scope 2 GHG emissions nonetheless obligates covered registrants to devote significant time and resources to measure their emissions and determine whether they are material. And even though climate risks may be among the risks that are material to an investor, it concludes that "the exceedingly granular nature of the information required by the Final Rules goes well beyond what must be disclosed in respect of the many other factors that may affect the valuation of a registrant's securities."

The Recission Proposal also asserts that climate-related disclosure rules deviate from the Commission's registrant-specific approach to disclosure, thereby interfering with the management of companies and infringing upon the traditional role of States in regulating corporations. In the SEC's view, the rules impose a costly burden to produce non-material information of little benefit to reasonable investors and conflict with the SEC's policy objectives of facilitating capital formation and promoting public company status.

Despite characterizing much of the climate-related disclosures as immaterial, the Recission Proposal approvingly cites to the SEC's 2010 Interpretive Guidance on Disclosure to Business or Legal Developments Regarding Climate Change. This guidance document explains how Items 101 (Description of Business), 103 (Legal Proceedings), 303 (Management's Discussion and Analysis), and 503(c) (Risk Factors) of Regulation S-K may require registrants to disclose climate-related risks. Examples of when disclosure should be made include material estimated capital expenditures for environmental control facilities, legislation or regulation likely to have a material effect on the registrant, its financial condition or results of operations, international accords that may impact the registrant's business, and significant physical effects such as impacts from severe weather events or sea level rise.

The Recission Proposal seeks public comment on, among other things, whether any portion of the climate-disclosure rules should be preserved. A complicating factor is President Trump's stated view that climate change is a hoax. The SEC seeks to sidestep this issue by declaring that climate change is a divisive issue outside the policy concerns of the federal securities laws. But the President's statements make evaluation of the materiality of climate-related risks more challenging.

Many registrants and reasonable investors cognizant of the prevailing scientific views of climate change and its anthropogenic causes consider climate-related risks and GHG emissions to be material. California statutes, European Union directives, and many company sustainability protocols require disclosure of these risks. Investors may pursue fraud claims if material information is not disclosed. The differing views as to the materiality of climate-related risks enhance the value of detailed disclosure rules. By providing investors with material, comparable, centrally located information about climate-related risks and offering companies a roadmap of their climate-related disclosure obligations, portions of the rules benefit investors and registrants. The rules will be open for public comment for at least 60 days following their publication in the Federal Register.

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