



SEC Chair Comments on Challenges to Proposed Climate Disclosure Rules

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During a talk at Yale Law School on February 13, 2024, Securities and Exchange Commission (SEC) Chair Gary Gensler addressed probable lawsuits challenging the SEC's proposed climate disclosure rules that were first announced on March 21, 2022. The proposed rules, if adopted, would create new disclosure requirements covering, among other things, climate-related risk factors and identification and mitigation of climate-related risks, climate targets and goals and plans for energy transitions, greenhouse gas emissions, and financial statements that include climate-related financial impact and expenditure metrics. Recent reports note that the final rules may be released in early March 2024 and may reduce the level of disclosures required for greenhouse gas emissions, including the proposed "Scope 3" emissions from indirect sources like supply chains or consumers.

Although many public companies currently provide some climate-related disclosures, the proposed rules' expansive reach have faced criticism, including from SEC Commissioner Hester M. Peirce, who argued in a recent dissent to the proposed rules that the rulemaking exceeds the SEC's statutory authority. Once a final version of the rules is released, they are expected to face legal challenges.

Gensler stated that the SEC is reviewing comments to the proposed rules and working to draft final regulations that will fall within the scope of the agency's authority and survive anticipated litigation. The SEC received more than 3,400 letters during the public comment period, which ended in June 2022, from various individuals, trade groups and public companies.

In its 2022 decision in West Virginia et al. v. Environmental Protection Agency et al., the U.S. Supreme Court found that the Environmental Protection Agency exceeded its authority when it enacted the Clean Power Plan, a regulatory scheme that would have required an aggressive cut in carbon emissions. The Court is also poised to decide whether to overturn Chevron v. Natural Resources Defense Council, a 1984 case that directs federal judges to defer to an agency's interpretation of federal law where a regulation contains ambiguous language, instead of allowing the court to supply its own interpretation. Following oral arguments in *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce* on January 17, 2024, legal commentators have indicated that *Chevron* deference is unlikely to survive.

The Court's decision to overturn the Clean Power Plan, and a possible upcoming decision to overturn *Chevron*, make the future of the SEC's proposed climate disclosure rules unclear. However, Gensler has stressed that the

proposed rules are strictly securities regulations, designed to keep investors informed on climate-related risks rather than to regulate companies' climate-related activities.

Winston's Capital Markets and Securities Law Watch will continue to provide updates on the proposed rules and post additional updates as they become available.

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