DEBATE HEATS UP OVER SEC'S PROPOSED RULES ON CLIMATE-RELATED DISCLOSURES

by Akshita Singh

The Securities and Exchange Commission (SEC) recently released a 510-page notice (Release Nos. 33-11042; 34-99478), proposing rules that would require registrants to include expanded climate-related information in registration statements and periodic reports. The rules would apply to disclosures by domestic and foreign companies.

Some hail the rules as means to improve and standardize climate-related disclosures. Others criticize the rules as being outside the scope of SEC purview.

The proposed rules would require public companies to disclose information that includes climate-related risks that are reasonably likely to have a material impact on their business, operations, or financial condition and certain climate-related financial s tatement m etrics. Among other key provisions, the proposed rules include the following accounting and impact disclosures:

Financial statment disclosures:

- The impact on financial statement line items related to severe weather events and other natural conditions and transition activities if such amount exceeds 1% of the related line item.
- The expenditures related to mitigating the risk of severe weather events and other natural conditions and transition activities.
- How severe weather events and other natural conditions and transition activities affected estimates and assumptions reflected in the financial statements.

Greenhouse gas emission (GHG) disclosures:

- Direct (classified as Scope 1) and indirect (classified as Scope 2) GHG emissions, which would need to be separately disclosed on a disaggregated (by each GHG) and aggregated basis. This disclosure would be required on a gross basis (before consideration of any offsets) and relative to intensity.
- Indirect upstream and downstream activities (classified as Scope 3) GHG emissions in gross terms and relative to intensity, if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions or if Scope 3 emissions are material.

Qualitative disclosures:

- The oversight and governance of climate-related risks by the registrant's board and Management.
- How any climate-related risks identified by the registrant have had or are likely to have a material impact on its business and consolidated financial statements, which may manifest over the short-, medium-, or long-term.
- How climate-related risks have (1) had or are likely to have a material impact on the business and its financial statements as well as (2) affected or are likely to affect the registrant's "strategy, business model, and outlook.
- The registrant's processes for detecting, evaluating, and managing climate-related risks and whether those processes are integrated into the registrant's broader risk management program.
- If a registrant uses an internal carbon price, the registrant's internal carbon price and how such price is determined.
- If the registrant uses a scenario analysis to assess its business in the context of climate-related risks, a description of the scenarios, assumptions, and projected financial impacts.
- If a registrant has adopted a climate transition plan, a description of the plan as well as relevant targets and metrics.

The proposed rules further require a holistic framework from public companies to address climate-related information. The topics are summarized below.

- Governance and oversight disclosures related to climate risks by the registrant's board and management, and registrant's processes for identifying, assessing, and managing climate-related risks and whether any such processes are integrated into the registrant's overall risk management system or processes.
- Risk management processes for identifying, assessing, and managing climate-related risks and any integration.
- Disclose information about using any carbon offsets or renewable energy certificates (RECs) in achieving such targets or goals.

The SEC clearly expects significant commentary and engagement from all sectors of the economy. The notice of proposed rulemaking opens the door to an ongoing conversation across the board. Just in the past week, the notice has caused varying reactions among government officials and business leaders.

Representative Patrick T. McHenry (R-North Carolina), the ranking member on the House Financial Services Committee, critiqued the proposal as "tone-deaf and misguided." Further stated, "The Biden administration is pushing its climate agenda through financial regulators because they don't have the votes to pass it in Congress."

Bill Weihl, a director of sustainability at Facebook, encouraged the proposal and noted, "It will make it possible for all interested stakeholders, including shareholders, to then push companies to take real action." Weihl currently leads ClimateVoice, a group that encourages employees to press for climate actions.

Before the proposal can go into effect, the SEC is seeking public comments by the 30th day after the release's publication or by May 20, 2022, whichever is later.

If you would like to participate in the comment process, please contact the following attorneys listed below or one of the attorneys in our Securities Practice Group.

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