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Is the Cat Out of the Bag on Climate Disclosure?



We shall see the final climate rule from the SEC tomorrow – and there surely will be much ink spilled on what will now be required (as of the compliance dates that the SEC chooses). There also will be much conjecture on the nature – and the number perhaps – of lawsuits filed challenging the SEC's rulemaking.

But does it matter whether the SEC even has a new climate rule at this point? Is all this gnashing about legal challenges to the rulemaking an empty exercise?

I think so. Climate science is pointing to acceleration of our circumstances and at some point, the dramatic change in our weather patterns – and the serious impacts it will have on the nature and type of businesses that we engage in – will be too significant for even the climate deniers to deny.

Businesses will be addressing climate in how they conduct business, both in the very near term and the future. And all of that inevitably will need to be shared in corporate disclosures. Many companies will be wanting to make those disclosures to illustrate how they are ahead of the curve. Ahead of the competition.

So despite support so far this proxy season for ESG-related shareholder proposals down a bit (although withdrawn proposals are also climbing at high rate), climate as a material issue is here to stay. Global disclosure standards will provide a baseline. And for larger companies, the EU's CSRD will remain the gold standard, even if the SEC's rulemaking is voided. Investors and other stakeholders will continue to desire climate disclosures.

As I wrote a few years ago in an article in "Insights," everyone who describes themselves as a securities law disclosure lawyer will soon also be thinking of themselves as a climate disclosure lawyer. Unfortunately, climate is the biggest challenge of our lifetime and this rulemaking from the SEC will be among the most important handed down during my career...

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