

MEMORANDUM

To: Members of the Committee on Financial Services
From: Financial Services Committee Staff
Date: April 5, 2024
Re: April 10, 2024, Full Committee Hearing entitled “Beyond Scope: How the SEC’s Climate Rule Threatens American Markets”

On Wednesday, April 10, 2024, at 10:00 a.m. (ET) in 2128 Rayburn House Office Building, the House Financial Services Committee will hold a hearing entitled: “Beyond Scope: How the SEC’s Climate Rule Threatens American Markets.” Testifying at the hearing will be:

- **Elad Roisman**, Partner, Cravath, Swaine & Moore LLP and former Commissioner and Acting Chairman of the U.S. Securities and Exchange Commission.
- **Robert Stebbins**, Partner, Willkie Farr & Gallagher LLP and former General Counsel of the U.S. Securities and Exchange Commission.
- **Chris Wright**, Chief Executive Officer of Liberty Energy.
- **Joshua T. White**, Assistant Professor of Finance, Owen Graduate School of Management, Vanderbilt University.
- **Jill E. Fisch**, Saul A. Fox Distinguished Professor of Business Law, University of Pennsylvania Law School

Background

On March 6, 2024, the Securities and Exchange Commission (“SEC”) voted 3-2 to adopt an 886-page rule entitled “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (“the Climate Rule” or “the rule”).¹ The rule introduces sweeping changes to existing disclosure obligations for public companies. Among its many requirements, the rule imposes new obligations including but not limited to scope 1 and 2 greenhouse gas (“GHG”) emissions; climate-related risks; board oversight of climate risks; management’s assessment and management of climate-related risks; climate-related targets and goals; and financial statement effects of certain climate related risks.

Shortly after adoption, numerous lawsuits challenging the rule were filed, including by companies, trade groups and attorneys general from several Republican-led states.² On March 15, 2024, the Fifth Circuit Court of Appeals granted a request for an administrative stay on the

¹ See SEC Adopting Release, “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (March 6, 2024), available at: <https://www.sec.gov/rules/2022/03/enhancement-and-standardization-climate-related-disclosures-investors#33-11275>.

² See, e.g., Clark Mindock, “Challenges to SEC’s climate rules sent to conservative-leaning US appeals court,” Reuters (Mar. 22, 2024), available at: <https://www.reuters.com/legal/challenges-secs-climate-rules-sent-conservative-leaning-us-appeals-court-2024-03-21/>.

rule.³ The stay was subsequently lifted and, following the SEC’s request to consolidate pending litigation, the Eighth Circuit Court of Appeals was selected via a lottery to hear the consolidated case.⁴

Despite modifications made to the initial proposal, the final rule presents several challenges that will have ripple effects throughout the economy. For example, the rule’s new requirements will increase public companies’ compliance costs, add complexity to their operations, and subject them to increased litigation risk. Given the rule’s relatively short timeline for compliance, public companies must act immediately to adhere to the rule’s requirements. Ultimately, it will be everyday Americans who suffer, as companies will hire fewer employees, raise prices to afford higher compliance costs, or avoid going public in response to the rule. This hearing will examine these issues as well as additional problems with the Climate Rule, including its expected consequences on public companies, their employees, and investors.

Legislative Proposals

- [H. J. Res. ____], providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Securities and Exchange Commission relating to “The Enhancement and Standardization of Climate-Related Disclosures for Investors.”

³ Perry Cleveland-Peck and Dylan Tokar, “U.S. Appeals Court Temporarily Halts SEC Climate-Disclosure Rule,” Wall Street Journal (Mar. 18, 2024), available at: <https://www.wsj.com/articles/u-s-appeals-court-temporarily-halts-sec-climate-disclosure-rules-456f2f4c>.

⁴ See, e.g., Clark Mindock, “Challenges to SEC’s climate rules sent to conservative-leaning US appeals court,” Reuters (Mar. 22, 2024), available at: <https://www.reuters.com/legal/challenges-secs-climate-rules-sent-conservative-leaning-us-appeals-court-2024-03-21/>; Andrew Levine, Ulysses Smith and Isabelle Glimcher, “The Challenges SEC’s Climate Disclosure Rule May Face,” Law360 (Mar. 19, 2024), available at: <https://www.law360.com/articles/1814872>.