CECP

SEC ESG Proposed Mandates Issue Brief

CECP is keeping apprised of responses to the proposed ESG disclosures from the SEC ahead of the comment period which ends on May 21. The proposal is a landmark proposition requiring companies to report on Scope 1 and 2 GHG emissions, as well as Scope 3, if material or where a company has established carbon targets. In addition to many other provisions, the proposal will require disclosures on how material climate risks are identified and managed.

While supportive of the general intent behind making ESG disclosures more uniform and comprehensive to inform investors for better decision making, there are specifics in the rules that are tedious and counterproductive. The proposal also contains unexpected provisions, particularly regarding financial statement inclusions and low thresholds for quantitative disclosures.

To understand our companies' needs and feedback on the SEC proposal, CECP carried out a CEO Roundtable, Pulse Survey, expert interviews, conversations with legal advisors, and discussions with many companies and other organizations.

In April 2022, 59 respondents participated in a CECP Pulse Survey asking about the reactions they were most strongly considering in response to the recent SEC proposal on climate-related disclosures. The most common reply was that companies are streamlining processes and controls between their teams. And around a quarter of respondents reported feeling adequately organized or not currently planning to make significant changes due to the proposal.

Also, a CECP CEO Roundtable with **Kelly Grier U.S. Chair and Managing Partner and Americas Managing Partner, EY**, also discussed how the rulemaking process is fraught with complexity. The mandated disclosures would require publicly traded companies to release information to investors about their emissions and how they are managing risks related to climate change and future climate regulations. For example, the disclosure requirement around Scope 3 emissions—such as transportation and distribution—has the highest level of liability. Please see Kelly's opening remarks for more information

In a recent CECP discussion with Leo E. Strine, Jr., Of Counsel in the Corporate Department at Wachtell, Lipton, Rosen & Katz and Carmen X. W. Lu, Counsel in Wachtell Lipton's Corporate Department, they explained five initial impressions on the SEC's proposal:

- **Scope, Location and Timing**. The level of detail and granularity is well beyond TCFD or the proposed ISSB framework. For example, issuers will need to disclose physical risks by zip code, up and down the value chain, and over the short-, medium- and long-term. Question whether these disclosures could swamp 10-Ks and registration statements and would be better housed separately and subject to a longer disclosure window.
- **Poorly Drafted Scenario Analysis and Transition Planning Disclosure Requirements**. Requiring disclosure of scenario analyses, transition planning, and carbon pricing, *if already used by the issuer*, is an odd and possibly confusing addition. This is because the overall scope of the proposed rules substantively covers such disclosures by requiring management to disclose forward-looking risks and mitigation strategies.

- **Competitive Information**. The proposed rules require extensive disclosure of business strategy, which could include sensitive competitive information—particularly among oil and gas companies facing existential transition risks. Question whether companies should be given the option to opt out of sensitive disclosures; otherwise, it is possible issuers will deal with this problem by making similar generic disclosures.
- **Audited Climate Disclosures**. The line-item financial statement disclosures of climate-related costs will be challenging, even for large issuers. Wondering if this is better suited for insurers—particularly for physical risks—and if transition-related expenditures should be disclosed in audited financial statements, or elsewhere.
- **Safe harbors**. Given the scope of the disclosures, should private right of action be permitted. And if we remove private right of action, do we also need additional assurances that the extensive forward-looking disclosures required by the proposed rules are properly vetted by the issuer?

As there is much interest from CECP's network about this proposal on climate-related disclosures, CECP plans to summarize and amplify what we are hearing from affiliate companies by submitting a comment letter to the SEC from CECP. A draft outline includes recommendations to:

- Maintain that the SEC has the appropriate authority (vs. arguments made on a role for the EPA in this)
- Focus on Scope 1 and 2 to gain learnings, can add Scope 3 later as more companies need to be included
- Vastly simplify the narrative disclosure—focus on the material, not everything that is known
- Incorporate industry-specific materiality
- Include private companies of a certain size
- Integrate closely with the ISSB as move toward generally accepted material metrics
- Build on what is learned from this in a more limited but very practical approach before considering more detailed and complex disclosures

Check out more information here about CECP's multi-year efforts around integrated long-term plans in an op-ed by Daryl Brewster, CEO, CECP here.

And here is more information about our Sustainable Business platform.