US SEC Climate Disclosure Update

The US SEC climate disclosure rules aren't dead yet. But they're on life support.

Here's the state of play. In late March, all litigation related to the SEC disclosure rules was consolidated at the Eighth Circuit. Then, on April 4th, the SEC stayed its own rules pending court review.

TCB has three takeaways.

1. The rules won't be implemented any time soon, since the Eighth Circuit likely will take substantial time to brief and decide the case.
2. Ultimately, more likely than not, the rules won't survive in their current form. To start, the Eighth Circuit likely will be hostile to SEC rules. Nine out of ten judges were appointed by Republican presidents. While political affiliation does not always determine case outcome, it is closely correlated on major economic and social issues – on less sweeping issues, justices can find common ground, but not on climate, not on Roe. And, as TCB has noted before, the Supreme Court likely will be hostile to the SEC's climate rules based on previous applications of its "major questions" doctrine. Finally, the outcome of the US election could render the rules moot regardless of the court process.
3. For European-headquartered companies and/or companies with a large European footprint, where regulation (e.g. CSRD) has been a key driver of disclosure, the ultimate fate of the SEC rules is less important in any event as data is already being aggregated and assessed for what's missing - and in companies that have faced governance issues in the past, it's being routinely reviewed. So, there is a competitive undercurrent to consider for U.S corporates if a 'wait and see' strategy is being contemplated.

What does this mean for executives? Companies aren't on a tight time frame to comply with the current SEC rules, and more likely than not, will never have to do so. TCB's take on the SEC delay is that Members should lay whatever groundwork is necessary to move quickly should the SEC regulations take effect in the next year or two, but to be judicious in allocating resources specifically to comply with those rules. There are many good business imperatives for continuing to implement company reporting and disclosure processes and capabilities (e.g. where sustainability is critical to customer relationships or employees or investors or doing business in Europe) and other regulatory regimes that may apply. Furthermore, TCB believes it is good business hygiene for companies to identify the material risks of climate impacts on their business model, operations and strategy, regardless of whether the SEC mandate to do so ever takes effect.

As always, TCB aims to help provide corporate executives with an unbiased, informed set of insights and analysis from which they can make the most informed decisions.

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