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Climate Regulation Cheat Sheet — Parsing SEC, CSRD, ISSB and California Rules

Boards will contend with an alphabet soup of climate disclosure requirements

By Melissa J. Anderson | March 18, 2024

Several overlapping climate disclosure directives will come into force over the next few years. Boards of companies that operate in multiple jurisdictions will need to oversee compliance with the rules, which have varying levels of specificity and different definitions of materiality.

For example, the SEC's climate rule hinges on financial materiality, while the EU's Corporate Sustainability Reporting Directive uses a double materiality standard, requiring companies to consider both financial and "impact."

Jurisdictions requiring disclosure under the International Sustainability Standards Board framework, such as Brazil, will require disclosure of Scope 3 greenhouse gas emissions — or those generated through a company's supply chain or product distribution — while the SEC rule does not. California's law will also require Scope 3, as will the EU's if climate is material to the company (and if it is not material, companies will have to explain why not).

Meanwhile, although the CSRD represents a baseline law, it will be ratified across the EU. Nation states can ratchet up the requirements within their own borders in a process known as "gold plating," according to Latham & Watkins.

Boards have been following the interplay of these potential rules and feeling pressure from market actors to disclose climate- and sustainability-related data and goals voluntarily for years.

"ESG is a global conversation, sustainability is a global conversation and while we pay a lot of attention to what is happening in the regulatory landscape, this is a conversation that has been developing in the markets since before the regulation was in play," said Sarah

Fortt, global co-chair of Latham & Watkins' environmental, social, and governance practice, in an interview with Agenda.

Still, mandatory disclosure intensifies the risk companies face. With disclosure requirements coming into force as early as 2025 or 2026 for most large public companies, depending on their geographic footprint, boards of companies with material climate and sustainability risk will need to focus their oversight on the matter.

Companies subject to multiple disclosure regimes should consider collecting all of the sustainability-related data into a single internal database, Fortt said.

"Given that lack of external consistency, my recommendation is that companies create their own internal consistency, which is a risk mitigation and management tool, fundamentally," she said.

Fortt advised companies to assemble cross-functional teams to ensure stakeholders across the organization are represented. She suggested that teams include internal and potentially external legal support, as well those with expertise in the core areas of reporting. Personnel representing data management, internal controls, risk assessment and mitigation, and business and operations should also be included.

How often that team reports to the board would depend on the company's geographic footprint, its exposure to ESG and sustainability disclosure requirements, its supply chain complexity and its future strategic plans.

Boards should also make sure they are mindful of the different definitions of materiality at play within the CSRD and SEC rules and consider how those nuances will impact disclosure, said Paul Davies, global co-chair of Latham's ESG practice and a member of its sustainability committee. Davies spoke on a recent webcast on the new SEC rule.

Davies emphasized the "need to get the appropriate advice in terms of what is disclosed, where its disclosed and how it's disclosed."

Finally, Fortt warned companies that even though certain disclosure requirements could be scaled back by court rulings, sustainability matters have worked their way into the capital markets. Examples range from due diligence questions that come up during dealmaking to private contract requirements.

So, even if the requirements are winnowed, directors' attention to the area should not wane, she said.

She pointed to the underpinnings of ESG and sustainability initiatives.

"[T]he conversation around the role of the company, the soul of the company, the corporate culture and the role that corporate culture plays in tying our values as individuals to the value of the corporation at which we work — I think that is something we could see develop over time as we have more sophisticated conversations around ESG and sustainability."

Sustainability Disclosure Regulation Cheat Sheet

	SEC	CSRD	ISSB	California
Scope	Primarily climate-related matters and governance	Covers the entire spectrum of sustainability topics	Currently covers general sustainability and climate, will eventually cover the spectrum of sustainability topics	Covers primarily climate-related matters, including GHG emissions and TCFD reporting, as well as certain offset disclosures
Intrajurisdictional considerations	May exist in addition to independent state-level requirements	Can include "gold plating" in EU jurisdictions. Will ultimately require reporting on behalf of global corporate groups.	Can include "gold plating" or other changes by jurisdiction	May exist in addition to other state requirments and the SEC rules
Materiality	Limited to financial materiality	Includes financial and "impact" matariality, a.k.a. "double materiality"	Standards claim to use "financial materiality"	Not directly addressed
Scope 3 required?	No	Yes, if climate is material; companies have to explain if not	Yes	Yes
Value chain	Indirect value chain considerations	Specified value chain reporting requirements	Yes	Through Scope 3 (and potentially through indirect risks)
Assurance	Limited and then reasonable assurance for certain companies	Limited assurance over a broad range of disclosure, potentially rising to reasonable assurance over time	Not currently (although will depend on jurisdictional adoption)	Limited and then reasonable assurance for certain companies
Implementation timing	Data requirements begin in 2025, reporting in 2026	Phased in over time. First phase data requirements begin in 2024, reporting in 2025	Depends on jurisdiction	Reporting to begin as early as 2026

Source: Latham & Watkins • Note: Gold plating occurs when national governments make group directives, such as from the EU, stricter within their own borders.

AGENDA