

Fifth Circuit Stays SEC's Climate Disclosure Rule

March 18, 2024

Late last Friday, on March 15, 2024, the U.S. Court of Appeals for the Fifth Circuit stayed the SEC's final climate disclosure rules (the "Rule"), adding to the uncertainty about the Rule's future. The court issued this stay in *Liberty Energy Inc. v SEC*, one of several cases filed in the Fifth Circuit since the SEC released the Rule on March 6.

In this case, the petitioners (Liberty Energy and Nomad Proppant Services) argued that a stay was appropriate given the petitioners' likelihood of success and the need to avoid irreparable injury from unrecoverable compliance costs and constitutional injuries. The petitioners' legal challenge, as discussed in our Debevoise In Depth "[Potential Legal Challenges to the SEC's Climate Disclosure Rule](#)," included claims under the Major Questions Doctrine, Administrative Procedures Act, and First Amendment.

The SEC argued in response that the petition involved "speculative and remote assertions of harm," noting that the Rule has "not yet been published in the Federal Register" and would "not require any disclosures before March 2026 at the earliest." Additionally, the SEC argued that a stay would be premature given that the Judicial Panel on Multidistrict Litigation had yet to assign a court to hear the multiple pending challenges, which the SEC requested the day before the stay's issuance.

Nevertheless, in a one-sentence order that omitted any rationale, the court granted the stay. This stay pauses the Rule's applicability while the court considers the legal challenges raised.

Given pending challenges in other circuit courts (including the Sixth, Eighth, Eleventh, and D.C. Circuits) and the SEC's request that the Judicial Panel on Multidistrict Litigation consolidate the suits, what comes next is not entirely certain. A lottery will determine which circuit court ultimately will hear the legal challenges, chosen randomly from among the courts in which petitions have been filed. If the assigned court is not the Fifth Circuit, that court could affirm, modify, or revoke the Fifth Circuit's stay as the legal challenges are heard.

Of particular importance, the Fifth Circuit's stay does not mean that the Rule ultimately will be struck down. Registrants subject to the Rule therefore should still consider carefully the Rule's application to their organizations and begin taking the steps necessary to comply.

We will continue to monitor these and related developments and will provide future updates.

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For more about legal challenges to the Rule, see our Debevoise In Depth: [Potential Legal Challenges to the SEC's Climate Disclosure Rule](#). For more about the Rule itself, see our Debevoise In Depth: [An In-Depth Analysis of the SEC's Climate Related Disclosure Rules](#) and [SEC Issues Long-Awaited Climate-Disclosure Rule](#). For updates on ongoing developments related to the Rule and other ESG matters, see our Debevoise [ESG Resource Center](#). Please do not hesitate to contact us with any questions.



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