SEC Voluntarily Stays Corporate ESG Disclosure Rules Pending Litigation

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Yesterday, the SEC voluntarily stayed its new ESG disclosure rules for public companies pending the outcome of several lawsuits that have been filed, which are now consolidated in the 8th Circuit US Court of Appeals. We [blogged earlier] about the emergence of several lawsuits filed in different federal circuits. What does this mean? We believe that it means that the SEC wanted to avoid the delay that could result from extensive briefing on a potential court injunction staying the effectiveness of the rules, and move immediately to the merits, in hopes of resolving the litigation a reasonable period before the first effective date for many companies to begin compliance for their 2025 fiscal years. If the SEC prevails and the matter is resolved on a speedy basis, then the SEC has a chance to move forward with the rules on its original schedule, but the odds of that seem 50-50 at best.

While there is now a real possibility that the effectiveness of the new rules will be pushed off an additional year if the SEC succeeds in the litigation, or succeeds in part if some of the rules are invalidated but not others, we recommend that companies for now continue on their current schedules to comply with the rules as currently scheduled, perhaps delaying somewhat any substantial expenditures while we monitor the proceedings in the 8th Circuit. We will post updates as they develop.

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