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The Fate of the New U.S. Climate Change Rules Under the New Republican Administration; Certain States are Expected to Ramp Up Their Climate Change Efforts

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It is no secret that the incoming Republican Administration has been skeptical of the federal government's climate change measures, which brings further uncertainty to the SEC's new climate change rules (the "Rules"). To be sure, there was already uncertainty surrounding litigation in the 8th U.S. Court of Appeals over the Rules' validity.

The new Rules for many companies were scheduled to take effect for their 2025 fiscal years, resulting in disclosure in annual reports on Forms 10-K and 20-F filed in 2026. However, the SEC will undoubtedly announce a delay of at least one year even if the SEC is successful in the 8th Circuit. The SEC had voluntarily stayed the effectiveness of its new rules in light of the litigation.

The new Administration will have a few options. For example:

- it can await the outcome of the litigation before deciding what, if anything, to do with the Rules;
- it could decide to leave the Rules intact, or modify them, in light of domestic and international pressure. As the SEC clarified in adopting the Rules that disclosure is triggered only by "material climate risks," many U.S. public companies may not have to provide disclosure; or
- the new Administration could decide to vacate the Rules.

The President-Elect had been critical of climate change measures in his campaign, but not all members of his team are necessarily against all climate change measures and therefore it is challenging to make any general, sweeping prediction. We will potentially see some additional color on the President-Elect's plans when a new SEC Chairman is nominated and testifies at Senate confirmation hearings.

State climate measures are likely to be only further spurred on by the change in Administration and questions about federal action. California will press on with its rules, and other Blue states undoubtedly will follow California’s lead, which we summarize below:

- **Emissions reporting:** California SB 253 requires both public and private U.S. entities that conduct business in California and have total annual revenue in excess of $1 billion U.S. dollars to report on their Scope 1 and 2 GHG emissions annually, beginning in 2026 (for 2025 data), and on their Scope 3 emissions, beginning in 2027.
- **Climate-related risk reporting:** California SB 261 requires both public and private U.S. entities that conduct business in California and have total annual revenues exceeding $500 million U.S. dollars to report on their climate-related financial risks (i.e., the material risk of harm to immediate and long-term financial outcomes due to physical and transitional risks) and mitigation strategies on their website on or before January 1, 2026, and biennially thereafter.
- **Carbon offset disclosures**: California AB 1305 imposes various disclosure requirements on public and private, domestic and international entities, regardless of their size or revenue, that (i) market or sell voluntary carbon offsets within California; (ii) operate in California and buy or use voluntary carbon offsets, or that do not operate in California but buy or use voluntary carbon offsets that are marketed or sold in California, and make climate-related claims (i.e., claims regarding achievement of net zero emissions, carbon neutral status, or significant carbon or GHG emissions reductions); or (iii) make climate-related claims within California or make climate-related claims and operate in California. The bill went into effect on January 1, 2024, and although no date was specified, the intent was that the first disclosures should be posted to the covered entity’s website by January 1, 2025, and annually thereafter.

California SB 219, signed into law by Governor Newsom, made some adjustments, but did not significantly impact the reporting deadlines set out above.

Furthermore, for U.S. businesses in scope of the European Union’s global group reporting under the Corporate Sustainability Reporting Directive, there will be a heightened need to monitor the divergent approaches and expectations to corporate sustainability reporting under the U.S. and European Union regulatory regimes.

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