

REGULATORY ROUNDUP

Climate Risk Disclosures — SEC, Congress

A fierce partisan debate in Washington on how and whether to address climate change is complicating efforts to promote transparency around commercial real estate properties' energy efficiency and disaster resiliency.

The SEC on March 21 proposed a rule that would require additional climate-related disclosures. The agency is reviewing comments, and market participants expect it to finalize the measure or propose an alternative in the coming months. While the proposal was silent on CMBS, a follow-up tailored to structured products is anticipated. The rule could be implemented as soon as Jan. 1, 2023.

The CRE Finance Council also has been wrestling for more than a year with how to update its investor reporting package to identify water efficiency, energy efficiency, greenhouse-gas emissions and property resiliency — that is, a building's vulnerability to storms, tornadoes, wildfires and other natural disasters.

Amid these efforts, however, conservative Republicans are bashing what they call “woke capitalists” as midterm campaigns gain steam. For example, former Vice President **Mike Pence** in a May 26 opinion piece in **The Wall Street Journal** accused investment firms including **BlackRock**, **State Street** and **Vanguard** of using environmental, social and governance scores to promote their own left-leaning agendas at the expense of shareholders and investors. He noted that **Chevron** and **ExxonMobil** received lower ESG grades than Russia's **Gazprom**, and that **Tesla** was delisted from an **S&P** index based on ESG investment principles because the company lacked a detailed carbon-reduction plan.

The **U.S. Supreme Court** raised the stakes on June 30 when it struck down an **Environmental Protection Agency** rule aimed at reducing carbon emissions from power plants. West Virginia Attorney General **Patrick Morrisey** vowed to challenge the SEC's pending disclosure rule based on that case.

For its part, CREFC is vetting a broad list of concepts and data

points with members in a bid to finalize its proposal, though it has said some data points won't immediately be available. Investors raising funds based on ESG principles have asked for the information, but finding data points that are available and verifiable is a major sticking point.

“There are definitely some new headwinds facing the ESG movement, which is very much still moving forward,” said **Jason Rozes**, a **Dechert** attorney working with the trade group on sustainability issues and a member of the nonprofit **Climate Reality Project's** Leadership Corps. “Mother Nature is not going to wait for Congress or the midterms, however, as we are seeing now with these record-high temperatures and increasingly heavy downpours around the globe.”

Sairah Burki, who oversees a CREFC sustainability task force, said the group is being deliberate in its language given the current debate, stressing that it is working to fulfill a market need as regulators already are moving forward.

“You don't want to get caught too far behind the eight ball [with regulators], but you also don't want to be faced with requirements that don't make sense for your industry,” she said. “You need to be working with members on what is appropriate and meaningful for the industry, and encouraging regulators to be patient until you get it right.”

“What it boils down to is the industry wants to ensure that the SEC is seeking the disclosure of material information in a way that investors get what they need and issuers are not overburdened with costs,” MBA's Flood said.

There's also the issue of overpromising on how “green” a property or investment might be. **Michael Ruder**, an attorney at **Cadwalader Wickersham** also working with CREFC on the issue, said the market needs to be mindful of the threat of enforcement actions.

“Greenwashing appears to have become a major enforcement issue at the SEC, given the public statements of commissioners and staff,” he said. “I am counseling clients that they need to be very cautious on ESG-related claims.” ❖

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