

Press Coverage | March 19, 2024

New SEC Emissions Disclosure Rules Spark Mixed Reactions

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Brink Dickerson, a partner with Troutman Pepper, was quoted in the March 19, 2024 *InformationWeek* article, [“New SEC Emissions Disclosure Rules Spark Mixed Reactions.”](#)

Brinkley Dickerson, an Atlanta-based partner in the corporate practice at Troutman Pepper, thinks it was prudent of the SEC to stop where it did, but he also foresees challenges.

“From the perspective of public companies, the final rules are a substantial improvement from what was proposed. The SEC dropped the disclosure requirement of so-called ‘Scope 3,’ which are emissions by downstream purchases and users of a company’s products and services,” says Dickerson in an email interview.

Dickerson argues that Scope 3 emissions are complex and extraordinarily difficult to estimate with accuracy, and it would have been costly, without any certain benefits for customers to estimate those emissions. The SEC also substantially reduced the amount of disclosure of climate-related costs that companies will have to make in their financial statements.

“There is a substantial school of thought that companies will spend billions of dollars identifying the required information, which is very granular compared to current disclosures and then auditing and reporting that information when there’s no substantive evidence that it will be meaningful to investors other than the very few for which ESG is the primary focus,” says Dickerson. “The SEC retained a requirement that for larger companies, Scope 1 and 2 disclosures [must] be accompanied by ‘attestations’ by audit firms or other experts. This is widely viewed as a solution without a problem. The SEC seems to assume that companies will lie or do a poor job – at a significant cost.”

Will the rules survive? Dickerson seems skeptical.

“I believe that the changes that were made are essential for there to be any chance for the final rules to survive judicial review. I do not believe the rules should survive [because] I believe that the essence of a significant portion of the rules is an intent to regulate emissions through requiring companies to make embarrassing disclosures,” says Dickerson. “I have talked with large investors, buy and sell-side analysts and others, and a majority of them do not believe the required disclosures are going to significantly affect their investment decisions or recommendations.”

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