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Biden Calls on Federal Government to Mitigate Climate-Related Financial Risk

This client alert, part of a series focused on ESG disclosure and regulatory developments, should be read together with our ESG Lexicon, available here, which provides definitions of some of the key terms used in ESG reports, disclosures and regulations.

Biden Executive Order on Climate-Related Financial Risk

On May 20, 2021, President Biden issued an Executive Order on Climate-Related Financial Risk (the "Executive Order," available here) that highlights the growing physical and transition risks of climate change on the U.S. economy, workers and families, and calls on the federal government to take concrete steps to mitigate these risks.

Key Aspects of the Executive Order

The Executive Order articulates a new policy, consistent with prior executive orders, to "advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk . . . including both physical and transition risks; act to mitigate that risk and its drivers, while accounting for and addressing disparate impacts on disadvantaged communities and communities of color . . . and spurring the creation of well-paying jobs; and achieve our target of a net-zero emissions economy by no later than 2050." In furtherance of this new policy, the Executive Order presents five key areas of focus:

- *Climate-Related Financial Risk Strategy*. The Executive Order directs the National Climate Advisor and the Director of the National Economic Council to develop, within 120 days, a comprehensive, government-wide climate-risk strategy regarding (i) the measurement, assessment, mitigation and disclosure of climate-related financial risk to government programs, assets and liabilities, (ii) financing needs related to the U.S. pledge to achieve net-zero greenhouse gas ("GHG") emissions by 2050, and (iii) opportunities for complementary private and public investments to meet these financing needs in ways that are mindful of workers, underserved communities and racial equity.

- *Assessment of Climate-Related Financial Risk by Financial Regulators*. The Executive Order calls on the Secretary of the Treasury, as the Chair of the Financial Stability Oversight Council (FSOC), to work with FSOC to consider (i) undertaking a detailed assessment of the climate-related financial risk (including both physical and transition risks) to the financial stability of the federal government and the wider U.S. financial system, and (ii) issuing a report within 180 days on any efforts by FSOC member agencies (which includes the Federal Reserve Board, the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission, among others), to address climate-related financial risk in their policies and programs. This report should include a discussion of the need for any "actions to enhance climate-related disclosures by regulated entities" and a recommended implementation plan for such actions, as well as recommendations on how climate-related financial risk can be mitigated through new or revised regulatory standards. The Secretary of the Treasury is also called upon to direct the Federal Insurance Office to review the supervision and regulation of insurers in light of climate-related issues, including the potential for significant disruptions of private insurance coverage due to climate change impacts.

- *Resilience of Life Savings and Pensions*. The Executive Order directs the Secretary of Labor to consider suspending, revising or rescinding by September 2021 two rules from the Trump administration, "Financial Factors in Selecting Plan Investments" and "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights."[1] The Secretary of Labor is also directed to submit a report within 180 days on actions that can be taken to protect the life savings and pensions of U.S. workers from climate-related financial risk, and how the Federal Retirement Thrift Investment Board has taken ESG considerations into account.

- *Federal Lending, Underwriting and Procurement*. The Executive Order calls for the development of recommendations for the integration of climate-related financial risk into federal financial management and financial reporting, especially with respect to federal lending programs. The Executive Order also directs the Secretary of Agriculture, the Secretary of Housing and Urban Development, and the Secretary of Veterans Affairs to consider approaches to better integrate climate-related financial risk into underwriting standards, loan terms and conditions, and asset management and servicing procedures in regards to federal lending. In relation to federal agency procurements, the Executive Order calls on the Federal Acquisition Regulatory Council to consider amending the Federal Acquisition Regulation to require federal suppliers to publicly disclose GHG emissions and climate-related financial risk and reduction targets, as well as to ensure that federal agency procurements minimize the risks of climate change.

- *Long-Term Budget Outlook*. With the aim of reducing the risk of climate change to the federal budget, the Executive Order calls on the Director of the Office of Management of Budget (OMB), in consultation with other advisors and agency leaders, to (i) identify and quantify the climate risk exposure of the federal budget, (ii) publish an annual report within the President's federal budget that assesses the federal government's climate risk exposure, and (iii) reduce the federal government's exposure to climate-related financial risk through the formulation of the federal budget and oversight of its execution.

Implications

President Biden has made climate change a central focus of his administration, and this Executive Order is the latest reflection of the Biden administration's ambitious and far-reaching goals in this respect. For example, the Executive Order's call for the Secretary of the Treasury to work with FSOC to review climate-related disclosures may impact the course of the SEC's current review of climate-related disclosures and related guidance.[2] Secretary Yellen has expressed support for the Financial Stability Board's Task Force on Climate-related Financial Disclosures and the International

[1] For more on these rules, see our prior client alerts, U.S. Department of Labor Issues Proposed Restrictions on ESG Investing (June 29, 2020) and U.S. Department of Labor Will Not Enforce Final Rules on ESG Investing, Proxy Voting (March 12, 2021).

[2] For more on recent SEC initiatives on climate-related disclosures, see our prior client alerts, Acting SEC Chair Allison Herren Lee Issues Statement on the Review of Climate-Related Disclosure (February 25, 2021); SEC Turns up the Heat on Climate and ESG Disclosures (March 4, 2021); and Acting SEC Chair Lee Discusses Additional Climate and ESG Initiatives (March 17, 2021).

Financial Reporting Standards Foundation's efforts to establish a Sustainability Standards Board that aims to develop a climate disclosure standard.[3] In addition, the Executive Order's call to review the supervision and regulation of insurers, as well as its call for new GHG disclosure requirements for major federal suppliers, could impact a wide swath of industries. Moreover, the future reports requested by the Executive Order are likely to include policy recommendations that could, directly or indirectly, affect corporate approaches to climate-related financial risk. As the Fact Sheet to the Executive Order noted, the Biden administration aims to develop a "whole-of-government" approach to mitigating climate-related financial risk[4]—with potential consequences for the entire U.S. economy.

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[3] See, for example, U.S. Department of the Treasury, Press Release, "Secretary of the Treasury Janet L. Yellen's Remarks to the Institute of International Finance" (April 21, 2021), available here.

[4] The White House, "FACT SHEET: President Biden Directs Agencies to Analyze and Mitigate the Risk Climate Change Poses to Homeowners and Consumers, Businesses and Workers, and the Financial System and Federal Government Itself" (May 20, 2021), available here.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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