



Dear Clients,

Recent U.S. Climate Disclosure Developments Pose Legal and Business Risks for Israeli Companies Traded in the U.S.

SEC Pauses Climate Disclosure Rule Pending Federal Court Decision - Israeli Companies Should Remain Vigilant.

On April 4, 2024, just weeks after adopting ground-breaking climate disclosure regulations, the U.S. Securities and Exchange Commission (SEC) issued an order temporarily suspending their implementation due to a legal challenge brought by Republican-led states, energy companies and business groups. Those contesting the regulations claim that the rules amount to environmental regulation, which they argue and therefore oversteps the SEC's legal authority.

The regulations include mandatory disclosures related to greenhouse gas emissions (Scope 1 and 2) and the climate-related financial risks that companies may face.

This decision came in response to multiple petitions for review filed against the SEC, now consolidated in the U.S. Court of Appeals for the Eighth Circuit. Despite the pause, the SEC reaffirmed its commitment to vigorously defending the Final Rules in court to ensure their legitimacy is upheld.

The suspension aims to prevent "regulatory uncertainty" that could arise if registrants were required to comply with the rules while their legality remains under challenge.

Although the stay temporarily eases the pressure to implement the climate disclosure rules, companies should not become complacent for several reasons.

First, **SEC staff are likely to continue issuing comment letters on existing climate-related disclosures, particularly under the SEC's 2010 guidance on climate change.** A recent example of the SEC's stringent enforcement of climate disclosure obligations occurred in **September 2024, when the SEC charged Keurig Dr Pepper Inc. with making misleading statements about the recyclability** of its single-use K-Cup coffee pods. According to the SEC, Keurig's claims in its 2019 and 2020 annual reports, which stated that the pods could be effectively recycled, were incomplete, as the company failed to disclose that two of the largest U.S. recycling facilities had expressed concerns about the feasibility of recycling the pods, stating that they would not accept them for

processing.

This action is part of the SEC's broader efforts to combat "greenwashing" and ensure accuracy in environmental claims provided in corporate disclosures. Keurig settled the charges by agreeing to pay a US\$ 1.5 million civil penalty, without admitting or denying the findings.¹

We can observe a similar legal development in California, where new legislation now mandates large corporations to disclose their greenhouse gas emissions across their entire value chain, including "Scope 3" emissions. These emissions cover indirect impacts associated with supply chain activities. The **Climate Corporate Data Accountability Act (SB 253)** applies to businesses with annual revenues exceeding US\$ 500 million. Under this law, reporting obligations for Scope 1 and Scope 2 emissions are expected to take effect in 2026, and reporting obligations for Scope 3 emissions are expected to take effect in 2027.

Additionally, SB 261 requires companies to report on climate-related financial risks and the steps they are taking to mitigate those risks. These reporting obligations are expected to take effect in 2026 and must comply with the standards set by the *Task Force on Climate-Related Financial Disclosures (TCFD)*.

These recent legal developments aim to enhance transparency, provide consumers with critical information on corporate emissions, and encourage businesses to take action in reducing their carbon footprint. Third-party verification will be required, and penalties will apply for non-compliance.

Furthermore, many companies may still face separate climate disclosure requirements under other jurisdictions, such as the EU's **Corporate Sustainability Reporting Directive (CSRD)**.

It is also important to note that even if the SEC's rules are ultimately overturned, investor and stakeholder demands are likely to continue driving private initiatives aimed at enhancing and standardizing climate-related disclosures. Failing to meet these expectations could result in significant business risks.

Given these considerations, it is essential for companies to use this period to evaluate their climate governance, data management, and emissions reporting capabilities, ensuring they are prepared for future compliance.

Please note that this is a general summary. Readers should seek specific legal advice before taking action with respect to the matters discussed herein. This update is provided by **FISCHER (FBC & Co.)** for informational purposes only and should not be construed as a legal opinion.

¹ **U.S. Securities and Exchange Commission**, "SEC Charges Keurig Dr Pepper with Misleading Environmental Claims About K-Cup Pods," Press Release No. 2024-122 (Sept. 2024), available at <https://www.sec.gov/newsroom/press-releases/2024-122>.

Sincerely,
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