President Biden's "Climate-Related Financial Risk" Executive Order Pushes Forward on the Administration's ESG Commitments

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On May 20, 2021, President Biden signed an Executive Order to address predicted financial instability in the federal government as a result of climate change. This Executive Order showcases a dramatic change in how the Biden Administration's stance towards climate-finance and environmental, social, and governance (ESG)-based investments will differ from the previous administration.

The Executive Order, titled "Climate-Related Financial Risk" seeks to "bolster the resilience of our rural and urban communities, States, Tribes, territories, and financial institutions in the face of the climate crisis . . ." To do so, the Executive Order directs several federal agencies to assess climate-finance risks and to recommend or issue policies to mitigate those risks.

What does the Executive Order do?

While the Executive Order's scope is mainly limited to the federal government and its contracts, it has potentially significant implications for the private sector.

This Executive Order is part of what appears to be a growing trend in the Biden Administration of promoting corporate ESG investments. Last month, the Securities and Exchange Commission announced their intention to require ESG disclosures. In March 2021, the Department of Labor (DOL) issued a policy statement explaining that, until further guidance, it will not enforce the Trump Administration's final rules on ESG investment and proxy voting by ERISA plans. Under the Executive Order, the DOL has until September 2021 to publish a proposed rule to revise or rescind those final rules. The Administration is sending a clear signal that ESG investments may be playing a much larger role in the near future.

In 2019, Business Roundtable released a new statement on the purpose of a corporation, redefining that purpose as being a moral obligation to serve all stakeholders in a fair and ethical way. This, along with President Biden's recent Executive Order and push to allow for ESG considerations, represents a dramatic push from both the public and private sectors towards recognizing environmental and social responsibilities. While this Executive Order is perhaps just a small start, it is a sign of increased public and private interests and collaboration in ethical leadership.

With a massive increase in ESG investments in just the past year, companies should be highly aware of this shift in investment trends and stakeholder preferences. More and more, investors will be looking to see if companies are meaningfully implementing sustainable policies, and the Biden Administration seems keen to encourage them.

[i] For more information on the Trump Administration's rule on proxy voting by ERISA plans, please see our prior client alert here. For more information on the rule regarding ESG investments by ERISA plan fiduciaries, please see our prior client alert here.

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