



Given the potential implications of the overturning of the *Chevron* doctrine by the US Supreme Court a few weeks ago – see our [Client Update](#) on the [Loper decision](#) – it's natural to be concerned that continued applicability of all sorts of federal regulations is suddenly in question. As Justice Elana Kagan pointed out in her dissent, "private parties have ordered their affairs—their business and financial decisions, their health-care decisions, their educational decisions—around agency actions that are suddenly now subject to challenge."

It remains to be seen how large of an impact the *Loper* decision will have. See our [Client Update](#) for several examples of areas where this decision may make way for new challenges.

With respect to SEC regulations, [one commentator](#) – a former SEC General Counsel – argues that *Chevron* deference has not played a major role in challenges to SEC rules over the past two decades, with such cases

often decided on other bases. One example is the Fifth Circuit's decision to invalidate the SEC's share repurchase rule last year, which was decided based on a holding that adoption of the rule amounted to arbitrary and capricious action under the Administrative Procedure Act. The ongoing challenges to the climate risk disclosure rule similarly make arguments based on the "major questions" doctrine (discussed in this [Client Update](#)) and arbitrary and capricious action.

Time will tell whether *Loper* creates a sea change in administrative rulemaking, or more of the same – at least with respect to SEC rules.

Explore more in

[Corporate Law](#)

Blog series

Public Chatter

Public Chatter provides practical guidance—and the latest developments—to those grappling with public company securities law and corporate governance issues, through content developed from an in-house perspective.

[Subscribe ?](#)

[Visit Public Chatter Resources for Guides, Quick Alerts and Programs](#)

[View the blog](#)