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## SEC Proposes Extensive Climate Change Disclosure Regulations

***The proposed rules would require significant, detailed new climate-related disclosures in annual reports and prospectuses.***

On March 21, 2022, by a 3-1 vote, the US Securities and Exchange Commission (the SEC or the Commission) [proposed rules](#) that would require registrants, including both domestic and foreign private issuers, to include climate-related information in registration statements and annual reports.<sup>1</sup> In summary, the proposed rules would require significant, detailed new narrative disclosures in the body of annual reports and prospectuses as well as new disclosures in the audited notes to annual financial statements and, for certain companies, a new attestation report by an independent outside expert relating to additional quantitative disclosures on greenhouse gas (GHG) emissions. The proposed rules are modeled in part on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and also draw upon the GHG Protocol.

### Narrative and GHG Emissions Disclosure Requirements

In particular, the proposed rules would require a registrant to disclose information regarding:

- The oversight and governance of climate-related risks by the registrant's board and management, including details on how the board and management exercise their oversight and engage on the setting of climate-related targets and goals, as well as disclosure regarding climate-related expertise;
- How climate-related risks, including physical and transition risks, identified by the registrant have had or are likely to have a material<sup>2</sup> impact on its consolidated financial statements,<sup>3</sup> business operations, or value chains, which may manifest over the short-, medium-, or long-term;
- How any identified climate-related risks have affected or are likely to affect the registrant's strategy, business model, and outlook, including how any identified impacts are considered as part of the registrant's business strategy, financial planning, and capital allocation;<sup>4</sup>

- Any analytical tools, such as scenario analysis, that the registrant uses to assess the impact of climate-related risks on its business and consolidated financial statements, or to support the resilience of its strategy and business model in light of foreseeable climate-related risks;
- If, as part of its net emissions reduction strategy, a registrant uses carbon offsets or renewable energy credits or certificates (RECs), the role that carbon offsets or RECs play in the registrant's climate-related business strategy, and the potential costs and risks associated with such offsets or RECs;
- If a registrant uses an internal carbon price, details regarding the carbon price, how it is set and used, and the rationale for its use;
- The registrant's process for identifying, assessing, and managing climate-related risks and whether any such processes are integrated into the registrant's overall risk management system or processes;
- GHG emissions data<sup>5</sup> for the registrant's most recently completed fiscal year and for the historical fiscal years (to the extent available) included in the registrant's consolidated financial statements in the applicable filing, including:
  - Scope 1 GHG emissions (i.e., GHG emissions from operations that are owned or controlled by the registrant) and Scope 2 GHG emissions (i.e., GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant) metrics, separately disclosed, expressed both by disaggregated constituent GHGs and in the aggregate, and in absolute and intensity terms;
  - Scope 3 GHG emissions (i.e., all indirect GHG emissions not otherwise included in Scope 2) in absolute and intensity terms, only if material or if the registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions;<sup>6</sup>
- The registrant's climate-related targets or goals, and transition plan, if any, including the baseline year (which should be consistent across multiple targets) and the registrant's progress; and
- If the registrant has adopted a transition plan as part of its climate-related risk management strategy, a description of how the registrant plans to mitigate or adapt to any identified physical or transition risks, and an annual update describing actions taken in accordance with the plan's targets or goals.

With regard to any of the proposed rules' provisions concerning governance, strategy, and risk management, the proposed rules would permit but not require registrants to also disclose information concerning any identified climate-related opportunities. In addition, the Commission's treatment of the concept of materiality in the proposing release represents a noteworthy departure from existing regulation, and, if adopted as is, could result in unprecedented engagement between the Commission and registrants, and between registrants and their key stakeholders.

### **Financial Statement Notes Disclosure Requirements**

Registrants would be required to provide new mandated climate-related financial statement metrics and related disclosure in a note to their consolidated financial statements, which includes disclosures regarding the financial impact of climate-related events (severe weather events and other natural conditions as well as physical risks identified by the registrant) and transition activities (including transition risks identified by the registrant) on any relevant line items in the registrant's consolidated financial

statements during the fiscal years presented. As part of the registrant's financial statements, the financial statement metrics would be subject to audit by the registrant's independent registered public accounting firm and come within the scope of the registrant's internal control over financial reporting.

### Attestation Requirement for Certain Registrants

The proposed rules would require accelerated filers and large accelerated filers (including such filers that are foreign private issuers) to include, in the relevant filing, an attestation report covering, at a minimum, the disclosure of its Scope 1 and Scope 2 emissions and to provide certain related disclosures about the attestation service provider. Both accelerated filers and large accelerated filers would have time to transition to the minimum attestation requirements, as described in more detail below. While the proposed rules would not require a registrant's attestation service provider to be a registered public accounting firm, the proposed rules would provide minimum attestation report requirements and minimum standards acceptable for attestation frameworks, and would require an attestation service provider to meet certain minimum qualifications, including with respect to independence.

### Phase-in and Transition Periods

The proposed rules would be phased in for all registrants, with the compliance date dependent upon the status of the registrant as a large accelerated filer, accelerated or non-accelerated filer, or smaller reporting company, and the content of the item of disclosure. For example, assuming that the effective date of the proposed rules occurs in December 2022 and that the registrant has a December 31 fiscal year-end, the compliance date for the proposed disclosures in annual reports would be:

Registrant Type	Disclosure Compliance Date	
	All proposed disclosures including GHG metrics, Scopes 1 and 2, but excluding Scope 3	Scope 3
Large accelerated filer	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)
Accelerated filer and non-accelerated filer	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)
Smaller reporting company	Fiscal year 2025 (filed in 2026)	Exempted

The proposed transition periods would provide existing accelerated filers and large accelerated filers one fiscal year to transition to providing "limited assurance" and two additional fiscal years to transition to providing "reasonable assurance," in each case, starting with the respective compliance dates for Scopes 1 and 2 disclosure described above.

### Vote and Dissent

The rules were proposed by a 3-1 vote, with SEC Chair Gary Gensler and Commissioners Caroline Crenshaw and Allison Herren Lee voting for the proposed rules and Commissioner Hester Peirce voting against. In her detailed dissent, Commissioner Peirce noted that the proposed rules are "missing ... [a] credible rationale for such a prescriptive framework when our existing disclosure requirements already capture material risks relating to climate change; ... [a] compelling explanation of how the proposal will generate comparable, consistent, and reliable disclosures; ... and [a]n honest reckoning with the consequences to investors, the economy, and this agency."

## Comment Period

The proposing release contains over 200 requests for comment. These requests for comments include the following questions:

- Should the Commission be modeling this disclosure framework on the TCFD framework as proposed?
- Do the current reporting requirements yield adequate and sufficient information regarding climate-related risks to allow investors to make informed decisions? In lieu of, or in addition to, the proposed amendments, should the SEC provide updated guidance on how existing rules may elicit better disclosure about climate-related risks?
- Should the SEC define or further define some of the terms upon which aspects of the proposal relies, such as “short, medium and long term,” “climate-related risks,” and “climate-related opportunities”?
- Should the SEC require the climate scenario analysis disclosure that the proposal requires? Would the 1995 Private Securities Litigation Reform Act forward-looking statement safe harbors provide adequate protection for the proposed scenario analysis disclosure? Should the SEC adopt a separate safe harbor?
- Should the SEC require registrants to disclose information about an internal carbon price if they maintain one, as proposed?
- Should the SEC require registrants to disclose the financial impact metrics, as proposed?
- Should Scope 3 emissions disclosure be voluntary?

Comments are due at the later of 30 days after the date the proposing release is published in the Federal Register or May 20, 2022.

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If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

**Alexander F. Cohen**

alexander.cohen@lw.com  
+1.202.637.2284  
Washington, D.C.

**Paul A. Davies**

paul.davies@lw.com  
+44.20.7710.4664  
London

**Paul M. Dudek**

paul.dudek@lw.com  
+1.202.637.2377  
Washington, D.C.

**Sarah E. Fortt**

sarah.fortt@lw.com  
+1.737.910.7326  
+1.202.637.2200  
Austin / Washington, D.C.

**Betty M. Huber**

betty.huber@lw.com  
+1.212.906.1222  
New York

**Karl A. Karg**

karl.karg@lw.com  
+1.312.876.7691  
Chicago

**Joel H. Trotter**

joel.trotter@lw.com  
+1.202.637.2165  
Washington, D.C.

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### Endnotes

- <sup>1</sup> The proposed rules would require a registrant to include climate-related disclosure in Securities Act or Exchange Act registration statements (including those for initial public offerings) and Exchange Act annual reports in a separately captioned "Climate-Related Disclosure" section and in the financial statements. Incorporation by reference is generally permitted. The proposed rules would also require registrants to disclose any material change to the climate-related disclosure provided in a registration statement or annual report in its Form 10-Q (or, in certain circumstances, Form 6-K for a registrant that is a foreign private issuer). The proposed required climate-related disclosures would be deemed "filed" for the purposes of potential liability under Exchange Act Section 18.
- <sup>2</sup> The proposing release emphasizes that, when assessing the materiality of a particular risk, management should consider its magnitude and probability over the short-, medium-, and long-term. The proposed rules would require a registrant to discuss its assessment of the materiality of climate-related risks over the short-, medium-, and long-term.
- <sup>3</sup> This disclosure would also be required to include how any of the mandated climate-related financial statement metrics (discussed later in this summary) relate to the registrant's business model or business strategy.
- <sup>4</sup> As proposed, a registrant would be required to disclose impacts on its business operations (including the types and locations of its operations); products or services; suppliers and other parties in its value chain; activities to mitigate or adapt to climate-related risks (including adoption of new technologies or processes); expenditure for research and development; and any other significant change or impact.
- <sup>5</sup> With respect to GHG emissions disclosure, the proposed rules would permit a registrant, if actual reported data is not reasonably available, to use a reasonable estimate of its GHG emissions for its fourth fiscal quarter, together with actual, determined GHG emissions data for the first three fiscal quarters, as long as the registrant promptly discloses in a subsequent filing any material difference between the estimate used and the actual, determined GHG emissions data for the fourth quarter.
- <sup>6</sup> The proposing rules contemplate a safe harbor for Scope 3 emissions disclosure from certain forms of liability under the Federal securities laws (*i.e.*, disclosure of Scope 3 emissions by or on behalf of the registrant would be deemed not to be a fraudulent statement unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith). In addition, "smaller reporting companies" would be exempt from the Scope 3 emissions disclosure requirement.