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Disclosing Climate-Related Risks and Metrics Under the SEC's Proposed Rule

What the proposed rule would mean for registrants and their filings with the SEC.

The US Securities and Exchange Commission's proposed climate disclosure rule, approved by a 3–1 vote on March 21, 2022, is the agency's most significant regulatory undertaking in more than a decade. In the year leading up to its issuance, the SEC repeatedly emphasized the need to respond to growing demand from investors for standardized climate-related metrics and reporting and the agency's goal of facilitating the disclosure of "consistent," "comparable," and "decision-useful" information.[1] With the issuance of the proposed rule, the agency delivered on these statements and then some.

In a lengthy document titled The Enhancement and Standardization of Climate-Related Disclosures for Investors, the SEC outlines its approach in preparing the proposed rule, the motivation for the rulemaking, the requirements of the rule, and the agency's economic analysis of the rule's potential effects on registrants. This new slate of proposed disclosures is meant to "augment" and "supplement" the disclosures already required in SEC filings, and should be considered complementary to, but not a replacement for,[2] disclosures called for by the agency's 2010 guidance.[3]

The proposed rule would apply to all domestic registrants and foreign private issuers. It would add six new parts to Regulation S-K[4] and two new sections to Article 14 of Regulation S-X[5] as well as amend numerous forms, including, but not limited to, Forms S-1, 10-Q, and 10-K.[6] Broadly speaking, these additions and amendments are designed to facilitate disclosure of:

- Climate-related risks and a registrant's strategy, business model, and outlook;[7]
- Governance and risk management of climate-related risks;[8]
- Greenhouse gas (GHG) emission metrics and related attestations;[9]
- GHG or climate-related targets and goals;[10] and
- Climate-related financial metrics and supporting notes.[11]

Importantly, in addition to these climate-related disclosures, the proposed rule would require that a registrant disclose any material changes to these disclosures on a quarterly basis.[12]

Latham & Watkins previously reported on the proposed rule on October 8, 2021 and March 22, 2022. This Client Alert analyzes the proposed disclosures and highlights some of the key issues for registrants to consider as the public comment period commences.

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Climate-Related Risks Defined

As an initial matter, it is helpful to understand what the agency has broadly defined as a "climate-related risk" for the purposes of disclosure. Specifically, the proposed rule defines climate-related risks as "the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole."[13] These risks are defined to include both "physical risks" ("acute" and "chronic") and "transition risks."

- **Acute physical risks** — defined as "event-driven and may relate to shorter term extreme weather events, such as hurricanes, floods and tornadoes, among other events."[14]
- **Chronic physical risks** — defined as relating to "longer term weather patterns and related effects, such as sustained higher temperatures, sea level rise, drought, and increased wildfires, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water."[15]
- **Transition risks** — defined as "the actual or potential negative impacts on a registrant's consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks, such as increased costs attributable to changes in law or policy, reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, reputational impacts (including those stemming from a registrant's customers or business counterparties) that might trigger changes to market behavior, consumer preferences or behavior and registrant behavior."[16]

Of particular import is the explicit inclusion of impacts of climate-related conditions and events on a registrant's value chain in the assessment of what could constitute a climate-related risk. The SEC's inclusion of value chain in its definition of transition risks reflects its explicit goal to "capture the full extent of a registrant's potential exposure to climate-related risks" extending beyond its own operations to its "suppliers, distributors, and others engaged in upstream or downstream activities."[17]

Materiality

In assessing the proposed rule, materiality and how it informs a registrant's disclosures merit careful consideration. The majority of the proposed disclosure obligations apply to all registrants regardless of materiality with two nuanced exceptions: (i) climate-related risks likely to have a "material impact,"[18] and (ii) Scope 3 GHG emission metrics deemed material (if not already being disclosed by the registrant).[19]

With regard to the registrant's determination of which climate-related risks are likely to have a "material" impact, the SEC points to US Supreme Court precedent,[20] finding that something should be considered "material" if there is "a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote."[21] The agency also points to the materiality determination required when preparing the Management's Discussion & Analysis (MD&A) section in a registration statement or annual report, noting a similar materiality determination would be required in the case of climate-related risks.[22] The agency emphasizes the need to give due consideration to the magnitude and probability of climate-related risks based on various time horizons.[23] To "help ensure" that management properly considers the dynamic nature of climate-related risks, the proposed rule would require a registrant to discuss its assessments of the materiality of climate-related risks in the short-, medium-, and long-term,[24] opening the door for engagement between the SEC and registrants on what constitutes "material" risk in the context of climate change.[25]

Required Disclosures

The SEC reviewed and considered existing climate disclosure frameworks and modeled the disclosures in its proposed rule, at least in part, on the Task Force on Climate-related Financial Disclosures (TCFD) and the GHG Protocol standards.[26] Consistent with these frameworks, the SEC's proposed rule would require disclosure on a number of topics, requiring both qualitative and quantitative disclosures as described in more detail below.[27]

a. Strategy, Business Model, and Outlook

The proposed rule would broadly require disclosure regarding a registrant's "strategy, business model and outlook" as it relates to climate-related risks, including those that the registrant deemed likely to have a "material impact," and climate-related risks more generally recognized by the agency.[28]

Climate-Related Risks Likely to Have a Material Impact

Under the proposed rule, a registrant would be required to identify and describe any climate-related risks reasonably likely to have a material impact on the registrant's business or consolidated financial statements over the short-, medium-, and long-term.[29] The SEC has not specified the year ranges for these proposed time periods. Instead, a registrant would be required to describe how it defines short-, medium-, and long-term, as well as how it takes into account or reassesses the expected useful life of its assets and the time horizons for its climate-related planning processes and goals.[30]

Once the registrant has identified and described its time horizon and identified any climate-related risks likely to have a material impact during that time horizon, the registrant would then need to provide detailed descriptions of the types of risks it has identified, categorizing them as either physical (acute or chronic) or transition risks.

- For physical risks, the registrant would need to describe the nature of the risk and the location and nature of properties, processes, or operations subject to that risk, with specific disclosures required for risks related to flooding, areas in high or extremely high water stress, or areas subject to extreme events, such as wildfires.[31]
- For transition risks, the registrant would need to describe the nature of the risk and whether it relates to any of the broad transition risk categories defined in the rule (see Section I). The proposed rule explicitly recognizes that a registrant with significant operations in jurisdictions that have made GHG emissions reduction commitments is likely exposed to transition risks that would require disclosure.[32]

The agency concedes that modeling these risks may be difficult and new to registrants but hails the progression of climate modeling and the climate consulting firms that are available to assist.[33]

Based on these identified and detailed climate-related risks, a registrant would then be required to:

- Describe the actual and potential impact of these identified risks on its strategy, business model, and outlook, including the impacts on the registrant's: (i) business operations, including the types and locations of its operations; (ii) products or services; (iii) suppliers and other parties in its value chain; (iv) activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes; (v) expenditure for research and development; and (vi) any other significant changes or impacts;[34]
- Discuss whether and how any of the impacts detailed above are considered part of the registrant's strategy, financial planning, and capital allocation, providing both current and forward-looking disclosures to demonstrate whether these impacts have been integrated into its business model and strategy;[35] and

- Provide a narrative description of whether and how any climate-related risks identified have affected or are reasonably likely to affect the registrant's consolidated financial statements (including reference to any financial metrics disclosed pursuant to the proposed rule).[36]

Use of Carbon Offsets, RECs, and Internal Carbon Pricing

The proposed rule would require a registrant to disclose its use of carbon offsets[37] or renewable energy credits (RECs),[38] and the role those instruments play in the registrant's climate-related business strategy. A registrant would be required to disclose the short- and long-term costs and risks associated with the use of offsets and RECs, including the risk that the availability or value of offsets or RECs might be curtailed by regulation or changes in the market.[39]

In addition to carbon offsets and RECs, a registrant would be required to disclose its use of internal carbon pricing[40] and specific facts about that use, including the price in units of the registrant's reporting currency per metric ton of CO_2e, the total price and estimated changes over time, the boundaries of measurement on which the total price is based, the price rationale, and how internal carbon pricing assists the registrant in evaluating and managing climate-related risks.[41]

Resilience and Analytical Tools

The proposed rule would require a registrant to describe the resilience of its business strategy in light of potential future changes in climate-related risks, including the use of any analytical tools or scenario analysis.[42] In defining scenario analysis, the agency highlights specific future climate scenarios a registrant could use, including those that assume global temperature increases of 3°C, 2°C, and 1.5°C above pre-industrial levels.[43] If scenario analysis is used, the registrant must disclose the scenarios considered, including parameters, assumptions, and analytical choices, and the projected financial impacts on the registrant's business strategy under each scenario.[44] While the SEC does not mandate the use of scenario analysis in the proposed rule, it does advocate for registrants looking to use scenario analysis to use scientifically based, widely accepted scenarios developed by organizations like the Intergovernmental Panel on Climate Change (IPCC), the International Energy Agency, and the Network of Central Banks and Supervisors for Greening the Financial System. The agency also advocates for the use of more than one climate scenario, including one that assumes climate policies are delayed and divergent across countries and industrial sectors.[45]

b. Governance and Risk Management

Under the proposed rule, a registrant would be required to disclose board of director and management oversight of climate-related risks. For board oversight, a registrant must disclose, if applicable:

- The identity of board members or board committees responsible for oversight of climate-related risks (these can be existing committees, like audit or risk, or can be separate committees);
- Whether any member of the registrant's board has expertise in climate-related risks, with disclosure required in detail to describe the nature of their expertise;
- The processes by which the board or committee discusses climate-related risks, including how the board is informed about, and how often the board discusses, those risks;
- Whether the board or committee considers climate-related risks as part of its business strategy, risk management, and financial oversight; and
- Whether and how the board sets climate-related targets or goals, and how it oversees progress against them, including any interim targets or goals.[46]

With respect to management, the proposed rule would require a registrant to disclose management's role in assessing and managing climate-related risks, including:

- Whether certain management positions or committees are responsible for assessing and managing climate-related risks;
- The identification of those positions or committees, the relevant expertise of the position holders, and a detailed description of the nature of their expertise;
- The processes by which such positions or committees are informed about and monitor climate-related risks; and
- Whether and how frequently such positions or committees report to the board.[47]

The proposed risk management disclosures would require a registrant to describe any processes the registrant has for identifying, assessing, and managing[48] climate-related risks, including how it considers and/or determines the significance of:

- Climate-related risks compared to other risks;
- Existing or likely regulatory requirements or policies, such as GHG emissions limits, when identifying climate-related risks;
- Shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks; and
- The materiality of climate-related risks, including how it assesses the potential scope and impact of any identified climate-related risk.[49]

When describing any processes for managing climate-related risks, a registrant would also be required to disclose, as applicable:

- How it decides whether to mitigate, accept, or adapt to a particular risk;
- How it prioritizes addressing climate-related risks;
- How it determines the appropriate mitigation for a high-priority risk; and
- Whether and how the disclosed processes are integrated into a registrant's overall risk management program.[50]

Finally, if a registrant has adopted a transition plan[51] as part of its climate-related risk management strategy, it must describe the plan, including relevant metrics and targets used to identify and manage physical and transition risks and update this disclosure year over year.[52]

c. GHG Emissions Reporting

The proposed rule would require a registrant to disclose GHG emissions for its most recently completed fiscal year and for historical fiscal years included in a registrant's consolidated financial statements in the applicable filing, to the extent such emissions data is reasonably available.[53] The agency defines GHG to include carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), nitrogen trifluoride (NF_3), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6).[54]

While the agency modeled the rule's emissions reporting after the GHG Protocol standards, it differs from those standards in one material respect — methodology for calculating emissions. While a registrant is required to disclose emissions, it is not required to use a particular method in calculating those emissions.[55] A registrant is, however, required to describe the methodology, significant inputs, and significant assumptions used to calculate its GHG emissions metrics, among other details.[56]

Additionally, the proposed rule specifies a number of requirements regarding the manner in which all emissions should be disclosed, including:

- Disaggregated by each constituent GHG gas and in the aggregate;[57]
- In absolute terms, excluding any use of purchased or generated offsets; and
- By GHG intensity[58] — a ratio that expresses the impact of GHG emissions per unit of economic value (metric tons of CO_2e per unit of total revenue and per unit of production for the fiscal year).[59]

The agency noted that, because the value of offsets can vary depending on restrictions that are or may be imposed by regulation or market conditions, not including them as part of emissions reporting allows investors to see the full magnitude of the climate-related risk posed by a registrant's emissions.[60]

In addition to these general reporting requirements, the proposed rule includes more specific rules depending on the scope of emissions being disclosed per the discussion below.

Scope 1 and 2 Emissions

The proposed rule would require all registrants, regardless of materiality, to disclose their Scope 1 emissions (direct emissions from operations owned or controlled by a registrant) and Scope 2 emissions (indirect emissions from the generation of energy consumed by operations owned or controlled by a registrant).[61] A registrant would be required to calculate Scope 1 and 2 emissions separately from all sources that are included in its "organizational" and "operational" boundaries.

A registrant's "organizational boundary" would determine the operations that should be considered owned and controlled by that registrant for the purpose of calculating its Scope 1 and 2 emissions. In another change from the GHG Protocol standards,[62] the agency proposes that a registrant's organizational boundaries be defined by the entities, operations, assets, and other holdings included in the registrant's consolidated financial statements.[63]

The registrant's "operational boundary" would determine which emissions could be considered direct or indirect. The registrant would be required to identify all emissions sources within its plants, offices, and other operational facilities that fall within its organizational boundaries and then categorize those emissions as either direct (Scope 1) or indirect (Scope 2).

Accelerated filers and large accelerated filers would be required to file a third-party report attesting to their Scope 1 and 2 emissions data. The attestation report would need to provide, at a minimum, a limited assurance, eventually scaling up to a reasonable assurance requirement (see compliance timeline at Section V).[64] Under the proposed rule, these attestation reports would not need to be provided by a certified accountant or be performed based on a specified methodology, however, the registrant would have to disclose information about the attestation report service provider that demonstrates their independence and expertise.[65]

Scope 3 Emissions

The proposed rule would not require all registrants to disclose Scope 3 emissions (e.g., smaller reporting companies, or SRCs, would be exempted[66]). Further, such emissions would have to be disclosed only "if material"[67] or if the registrant "has set a GHG emissions reduction target or goal that includes its Scope 3 emissions."[68] With regard to materiality, the agency issues a word of caution to registrants, noting the need to resolve any doubts regarding materiality of Scope 3 emissions "in favor of those the statute is designed to protect[]...namely investors."[69] The agency specifically identifies industries in which it believes Scope 3 emissions are likely material, including the automobile industry, financial institutions, and institutional investors (especially those with their own GHG emissions reductions goals) as well as oil and

gas product manufacturers.[70] The agency also calls attention to emissions from outsourced activities as potentially material Scope 3 emissions.[71]

The proposed rule defines Scope 3 emissions as "all indirect emissions not otherwise included in a registrant's Scope 2 emissions, which occur in the upstream and downstream activities of a registrant's value chain."[72] According to the proposed rule, upstream activities in which Scope 3 emissions might occur include:

- A registrant's purchased goods and services;
- A registrant's capital goods;
- A registrant's fuel- and energy-related activities not included in Scope 1 or 2 emissions;
- Transportation and distribution of purchased goods, raw materials, and other inputs;
- Waste generated in a registrant's operations;
- Business travel by a registrant's employees;
- Commuting by a registrant's employees; and
- A registrant's leased assets related principally to purchased or acquired goods or services.[73]

Downstream activities in which Scope 3 emissions might occur include:

- Transportation and distribution of a registrant's sold products, goods, or other outputs;
- Processing by a third party of a registrant's sold products;
- Use by a third party of a registrant's sold products;
- End-of-life treatment by a third party of a registrant's sold products;
- A registrant's leased assets related principally to the sale or disposition of goods or services;
- A registrant's franchises; and
- A registrant's investments.[74]

Under the proposed rule, Scope 3 emissions would need to be disclosed separately from Scope 1 and 2 emissions, but in the same manner — in absolute terms (disaggregated and aggregated) and by GHG intensity. In its disclosure, a registrant would be required to identify the categories of upstream or downstream activities that were included in the calculation of the Scope 3 emissions. If any category were "significant to the registrant," then the registrant would need to identify all such categories and provide Scope 3 emissions data separately for them, in addition to the total.[75] A registrant would need to describe the "data sources used to calculate" its Scope 3 emissions, including (i) emissions reported by third parties in its value chain and if they were verified or unverified; (ii) data concerning specific activities, as reported by parties in the registrant's value chain; and (iii) data derived from economic studies, published databases, governmental statistics, industry associations, or other third-party sources, including industry averages of emissions, activities, or economic data.[76]

d. GHG and Climate-Related Targets and Goals

The proposed rule would require a registrant to disclose if it had set any targets or goals to reduce GHG emissions or any other climate-related targets or goals, including those regarding energy or water use, conservation or ecosystem restoration, or revenues from low-carbon products.[77]

The disclosure would need to include any interim targets; the scope of activities and emissions included in any target; the unit of measure, such as if the target were absolute or intensity-based; the defined time horizon of the target; and how the registrant intended to meet it.[78] A registrant would also need to disclose whether, as a way to achieve its targets or goals, it used carbon offsets or RECs, and related information

and costs regarding those instruments.[79] A registrant would be required to update these disclosures each year with information demonstrating its progress toward meeting its goals.[80]

e. Financial Metrics

Assuming threshold requirements were met,[81] a registrant would be required to disclose, on the registrant's consolidated financial statements, the financial impacts, expenditures, and estimates and assumptions impacted by (i) severe weather events and other natural conditions, (ii) transition activities, and (iii) climate-related risks identified by the registrant.[82]

Severe Weather Events and Other Natural Conditions

- **Financial impacts:** A registrant would need to disclose the impact of severe weather events and other natural conditions, such as flooding, drought, wildfires, extreme temperatures, and sea level rise, on any relevant line items in the registrant's consolidated financial statements during the fiscal years presented, including historical periods. At a minimum, a registrant would need to present an "aggregated line-by-line basis for all negative impacts," and separately "on an aggregated line-by-line basis for all positive impacts."[83] Some line items that may be impacted include: (i) changes to revenue, (ii) impairment charges and changes to the carrying amount of assets, (iii) changes to loss contingencies or reserves, and (iv) changes to total expected insured losses.[84]

- **Expenditures:** A registrant would need to disclose the aggregate amount of expenditure expensed and the aggregate amount of capitalized costs incurred to mitigate the risks from severe weather events and other natural conditions. By way of example, a registrant could be required to disclose the amount of expense or capitalized costs, as applicable, to increase the resilience of assets or operations, retire or shorten the estimated useful lives of impacted assets, relocate assets or operations at risk, or otherwise reduce future impacts to business operations.[85]

- **Financial estimates and assumptions:** A registrant would need to disclose whether the estimates and assumptions it used to produce its consolidated financial statements were impacted by exposure to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions with a qualitative description of how they were impacted.[86]

Transition Activities

- **Financial impacts**: A registrant would need to disclose the impact of any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risk on any relevant line item to the same extent as financial impacts of severe weather events above. Some line items that may be impacted include: (i) changes to revenue (due to emissions pricing or regulations resulting in the loss of a sales contract); (ii) changes to operating, investing and financing, and cash flow (from changes in upstream costs, like transportation and raw materials); (iii) changes to the carrying amount of assets (due to change of useful life or value due to transition); and (iv) changes to interest expense (from climate-linked bonds in which interest increases if climate targets are not met).[87]

- **Expenditures:** A registrant would need to disclose the aggregate amount of expenditure expenses and capitalized cost to reduce GHG emissions or otherwise mitigate transition risk exposure. If a registrant has disclosed GHG commitments or targets, it would need to disclose the costs relating to meeting its targets, commitments, and goals in the fiscal years presented.[88]

- **Financial estimates and assumptions:** A registrant would need to disclose whether its financial estimates and associated assumptions were impacted by severe weather events and other natural

conditions, as well as by the potential transition to a lower carbon economy and if so, in both cases, a qualitative description of how they were impacted.[89]

Climate-Related Risks

- A registrant would need to disclose the financial impacts, expenditures, and financial estimates and assumptions impacted by climate-related risks that it identified in the narrative portion of its annual reports or registration statements.[90]

A registrant would be required to provide "contextual information" describing how it derived each specified metric, including a description of significant inputs and assumptions used, and if applicable, policy decisions made to calculate the specific metrics.[91]

Disclosure would need to be provided for a registrant's most recently completed fiscal year, and for the historical fiscal year(s) included in the consolidated financial statements in the filing.[92] For instance, if a registrant were required to include balance sheets at the end of its two most recent fiscal years and income statements and cash flow statements as of the end of its three most recent fiscal years, it would be required to disclose two years of the climate-related metrics that correspond to the balance sheet line items and three years of climate-related metrics that correspond to income.

These financial statement metrics would be subject to audit by an independent registered public accounting firm and come within the scope of the company's internal control over financial reporting.[93]

Safe Harbor

As stated throughout the proposed rule release, to the extent any of the proposed climate-related disclosures constitute forward-looking statements, they may be eligible for protection by the safe harbor provisions of the Private Securities Litigation Reform Act (PSLRA), assuming all other PSLRA conditions are met. Notable exceptions to these protections include forward-looking statements made in connection with an initial public offering (IPO). As a result, climate-related disclosures in registration statements for IPOs are excluded from any safe harbor protections. Additionally, the SEC's authority to bring an enforcement action is not affected by such provisions.[94]

Timeline for Compliance

The compliance date for a registrant would depend on the status of that registrant as a large accelerated, accelerated, or non-accelerated filer or SRC and the content of the disclosure, specifically whether Scope 3 emissions must be disclosed, as well as the type of assurance required for emissions reporting generally.[95] Those subject to Scope 3 disclosures would have one additional year to comply with that specific reporting obligation[96] (with SRCs exempted from all Scope 3 reporting requirements).[97] Similarly, limited assurance for emissions metrics would not be required until one to two years after the commencement of emissions reporting with reasonable assurance requirements an additional two years after that.

If the proposed rule is approved in December 2022, and a registrant has a December 31 fiscal year-end, the compliance date for proposed disclosures in annual reports will be:

Registrant Type	Disclosure Compliance Date[98]			
	All proposed disclosures, including GHG emissions metrics: Scope 1, Scope 2, and associated intensity	**GHG emissions metrics: Scope 3 and associated intensity metric (if applicable)**	**Limited Assurance for Scope 1 and 2 emissions metrics**	**Reasonable Assurance for Scope 1 and 2 emissions metrics**
Large Accelerated Filer	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)	Fiscal year 2024 (filed in 2025)	Fiscal year 2026 (filed in 2027)
Accelerated Filer	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)	Fiscal year 2025 (filed in 2026)	Fiscal year 2027 (filed in 2028)
Non-Accelerated Filer	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)	Exempt	Exempt
SRC	Fiscal year 2025 (filed in 2026)	Exempt	Exempt	Exempt

Importantly, to the extent a registrant has a different fiscal yearend that results in its fiscal year 2023 commencing before the effective date of the proposed rule, it will not be required to comply with these disclosures until the following fiscal year.[99]

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Endnotes

[1] Gary Gensler, Chair, Remarks before the Principles for Responsible Investment "Climate and Global Financial Markets" Webinar (July 28, 2021) https://www.sec.gov/news/speech/gensler-pri-2021-07-28.

[2] Proposed Rule Release at 18.

[3] The SEC's 2010 guidance "Regarding Disclosure Related to Climate Change" had previously alerted registrants that disclosure obligations under existing SEC rules could be triggered by climate-related issues, but, according to the agency, the 2010 guidance has not yielded the kind of consistent information required for investors to compare company disclosures to the degree needed. *See* Gary Gensler, Chair, Remarks before the Principles for Responsible Investment "Climate and Global Financial Markets" Webinar (July 28, 2021) https://www.sec.gov/news/speech/gensler-pri-2021-07-28.

[4] 17 CFR 229.1500 through 1506.

[5] 17 CFR 210.14-01 and 14-02.

[6] Proposed Rule Release at 3, identifying amendments to Forms S-1 (17 CFR 239.11), S-11 (17 CFR 239.18), S-4 (17 CFR 239.25), F-4 (17 CFR 239.34), 10 (17 CFR 249.210), 20-F (17 CFR 249.220f), 6-K (17 CFR 249.306), 10-Q (17 CFR 249.308a) and 10-K (17 CFR 249.310).

[7] 17 CFR 229.1502.

[8] 17 CFR 229.1501 and 1503.

[9] 17 CFR 229.1504 and 1505.

[10] 17 CFR 229.1506.

[11] 17 CFR 210.14-01 and 14-02.

[12] Proposed Rule Release at 508.

[13] 17 CFR 229.1500(c).

[14] 17 CFR 229.1500(c)(2).

[15] 17 CFR 229.1500(c)(3).

[16] 17 CFR 229.1500(c)(4).

[17] Proposed Rule Release at 61; *see also* 17 CFR 229.1500(t) defining "upstream activities" as "activities by a party other than the registrant that relate to the initial stages of a registrant's production of a good or service" and "downstream activities" as "activities by a party other than the registrant that relate to processing materials into a finished product and delivering it or providing a service to the end user[.]"

[18] 17 CFR 229.1502(a).

[19] 17 CFR 229.1504(c).

[20] *See Basic Inc. v. Levinson*, 485 U.S. 224, 231, 232, 240 (1988).

[21] Proposed Rule Release at 69.

[22] Proposed Rule Release at 70.

[23] Proposed Rule Release at 69-70.

[24] Proposed Rule Release at 71.

[25] In reviewing the comment letters that the Commission has submitted to companies in recent months with respect to their existing climate change disclosure, questions that go to how the company is determining materiality in the context of climate change-related risks and impacts are notably among the most frequently asked questions. This may indicate the type and level of engagement that companies can expect in the future with respect to their approaches to materiality in the context of climate change-related disclosures, including those pertaining to climate change-related risks.

[26] The framework created by the TCFD establishes 11 disclosure topics related to four core themes relating to climate-related financial risks: governance, strategy, risk assessment, and metrics and targets. The Financial Stability Board, at the direction of the G20 Finance Ministers, established the TCFD in 2015 to promote better-informed financial decision making in light of climate change risks. The GHG Protocol standards have developed over 20 years through the work of private sector bodies to provide uniform methods to measure and report seven greenhouse gases covered by the Kyoto Protocol and delineate "scopes" of emissions to differentiate emissions that are directly or indirectly attributable to the activities of the reporting entity.

[27] Note that the SEC's proposal differs slightly from the approach advocated by the TCFD. For instance, the TCFD does not require an entity to identify specific board members and management personnel with expertise in climate-related risks. While the TCFD requires the use of scenario analysis, specifically utilizing a scenario involving 2°C or lower, as well as the disclosure of how climate-related performance metrics are incorporated into remuneration policies, the SEC does not include those requirements in the proposed rule.

[28] 17 CFR 229.1502.

[29] 17 CFR 229.1502(a); Proposed Rule Release at 70-71.

[30] 17 CFR 229.1502(a)(2); Proposed Rule Release at 68.

[31] 17 CFR 229.1502(a)(1)(i)(A)-(B); Proposed Rule Release at 63-65; Proposed Rule Release at 70-71.

[32] 17 CFR 229.1502(a)(1)(ii).

[33] Proposed Rule Release at 71.

[34] 17 CFR 229.1502(b).

[35] 17 CFR 229.1502(c).

[36] 17 CFR 229.1502(d).

[37] Carbon offsets represent an emissions reduction or removal of GHG in a manner calculated and traced for the purpose of offsetting an entity's GHG emissions.

[38] The Agency proposes adopting the REC definition used by the Environmental Protection Agency (EPA), defining REC as a credit or certificate representing each purchased megawatt-hour (1MWh or 1000 kilowatt-hours) of renewable electricity generated and delivered to a registrant's power grid. *See* Proposed Rule Release at 82.

[39] Proposed Rule Release at 84. The agency specifically calls out the risks and financial impacts associated with both offsets and RECs, noting that while their use may mean lower expenses in the short term, their continued use is a long-term expense. The agency also flagged the potential increased cost for both RECs and offsets if an increase in demand leads to scarcity and the risk that an offset could suddenly lose its value unexpectedly depending on nature conditions, citing an example of protected forest land that generates offsets that burns in a wildfire. *See* Proposed Rule Release at 83.

[40] Defined as an estimate cost of carbon emissions used internally within an organization. *See* Proposed Rule Release at 84; *see also* 17 CFR 229.1502(e).

[41] 17 CFR 229.1502(e)(1)-(3).

[42] 17 CFR 229.1502(f); *see also* 17 CFR 229.1500(o) defining scenario analysis.

[43] 17 CFR 229.1500(o).

[44] 17 CFR 229.1502(f).

[45] Proposed Rule Release at 91-93.

[46] 17 CFR 229.1501(a)(1); *see also* Proposed Rule Release at 100-101.

[47] 17 CFR 229.1501(b)(1); *see also* Proposed Rule Release at 102-103.

[48] For instance, the agency noted that if a registrant uses insurance or other financial products to manage its exposure to climate-related risks, it may need to disclose those products. Proposed Rule Release at 107-108.

[49] 17 CFR 229.1503(a)(1).

[50] 17 CFR 229.1503(a)(2), (b).

[51] Transition plan is defined as a registrant's strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations. 17 CFR 229.1500(s).

[52] 17 CFR 229.1503(c)(1)-(3).

[53] 17 CFR 229.1504(a).

[54] 17 CFR 229.1500(g).

[55] Proposed Rule Release at 167.

[56] Proposed Rule Release at 194; 17 CFR 1504(e)(1).

[57] 17 CFR 229.1504(a)(1); Proposed Rule Release at 154.

[58] This represents another departure from the GHG Protocol standards that does not require an entity that reports emissions in absolute terms to also report using GHG intensity.

[59] Proposed Rule Release at 189; 17 CFR 229.1504(d)(1).

[60] Proposed Rule Release at 161.

[61] 17 CFR 229.1500(p)(q).

[62] The GHG Protocol standards advocates for an equity share or control approach in defining organizational boundaries.

[63] Proposed Rule Release at 195-196; *see also* 17 CFR 229.1504(b)(2) (noting that a registrant may exclude emissions from investments that are not consolidated, are not proportionately consolidated or that do not qualify for the equity method of accounting in the registrant's consolidated financial statements).

[64] Proposed Rule Release at 226.

[65] Proposed Rule Release at 236-237, 17 CFR 229.1505.

[66] 17 CFR 229.1504(c)(3).

[67] While the GHG Protocol publishes a separate standard related to the accounting of Scope 3 emissions, the GHG Protocol's Corporate Accounting and Reporting Standard more generally considers Scope 3 emissions to be an optional reporting category.

[68] 17 CFR 229.1504(c)(1).

[69] Proposed Rule Release at 171.

[70] Proposed Rule Release at 172-174.

[71] Proposed Rule Release at 210; 17 CFR 229.1504(e)(8).

[72] 17 CFR 229.1500(r).

[73] 17 CFR 229.1500(r)(1).

[74] 17 CFR 229.1500(r)(2).

[75] 17 CFR 229.1504(c)(1).

[76] 17 CFR 229.1504(c)(2)(i)-(iii).

[77] 17 CFR 119.1506(a)(1).

[78] 17 CFR 229.1506(a)(2).

[79] 17 CFR 229.1506(d).

[80] 17 CFR 229.1506.

[81] Registrants must disclose the financial impact on a line item in their consolidated financial statements only if the sum of the absolute values of all the impacts on the line item is less than one percent (1%) or more of the total line item for the relevant fiscal year. Similarly, disclosure of the aggregate amount of expenditure expensed or the aggregate amount of capitalized costs incurred is not required if such amount is less than 1% of the total expenditure expensed or total capitalized costs incurred, respectively for the relevant fiscal year. Section 210.14-02(b)(1)-(2).

[82] Proposed Rule Release at 127-128; Section 210.14-01 and 14-02.

[83] Section 210.14-02(c).

[84] Section 210.14-02(c)(1)-(4).

[85] Section 210.14-02(e).

[86] Section 210.14-02(g).

[87] Section 210.14-02(d)(1)-(4).

[88] Section 210.14-02(f).

[89] Section 210.14-02(g) and (h). The proposal is not entirely clear as to whether the 1% threshold described in footnote 81 applies to this assumption impact analysis.

[90] Section 210.14-02(i).

[91] Section 210.14-02(a).

[92] Section 210.14-02(d).

[93] Proposed Rule Release at 43.

[94] Proposed Rule Release at 71-72.

[95] Proposed Rule Release at 48, 226, and 303.

[96] Proposed Rule Release at 49 and 303.

[97] Proposed Rule Release at 289.

[98] Proposed Rule Release at 226, 302-303.

[99] Proposed Rule Release at 303.