

SEC Adopts Final Climate-Related Disclosure Rules

MARCH 6, 2024

On March 6, 2024, the US Securities and Exchange Commission (SEC or Commission) announced the adoption of final rules requiring registrants – both domestic companies and foreign private issuers (FPIs) – to include climate-related information in their registration statements and annual reports. The final rules differ from the SEC’s proposed rules released in March 2022 in significant ways, including:

- elimination of the requirement to include Scope 3 greenhouse gas (GHG) emissions data;
- limiting the requirement to include Scope 1 and Scope 2 GHG emissions data to large accelerated filers (LAFs) and accelerated filers (AFs), and only when determined to be material;
- allowing any required Scope 1 and Scope 2 disclosures to be filed on a delayed basis;
- elimination of the requirement to disclose certain financial statement impact metrics in a note to the financial statements;
- extending application of the safe harbor from private liability for securities law claims relating to climate-related disclosures of transition plans, scenario analysis, the use of an internal carbon price, and targets and goals;
- a general narrowing of, or less prescriptive approach for, many of the proposed disclosure requirements, and limiting those disclosures to those that have a material impact, or are reasonably expected to have a material impact, on the registrant’s business strategy, results of operations, financial condition, business model or outlook; and
- extending the phase-in periods for compliance, as detailed below.

Some of these changes increase the likelihood that the final rules will survive anticipated legal challenges to their validity. For larger registrants that have previously provided detailed disclosure on their GHG emissions, either voluntarily or pursuant to other disclosure requirements, these changes also mean that their current emissions data collection and reporting processes are likely sufficient for them to comply with the SEC’s final rules in most respects. That said, the SEC estimates in its adopting release that the final rules could increase a registrant’s average annual disclosure compliance costs by as much as \$739,000 over the first ten years of compliance.

DISCLOSURE REQUIREMENTS – FINAL RULES VS. PROPOSED RULES

The following is a high-level, summary comparison of the climate-related disclosure requirements of the final rules and the proposed rules. In the upcoming weeks, we will prepare a detailed analysis of the specific disclosures required by the final rules.

| DISCLOSURE | 2022 PROPOSED RULES | 2024 FINAL RULES |
|--|--|---|
| Climate-Related Risks | How identified climate-related risks, including physical and transition risks, have had or are likely to have a material impact on the registrant’s consolidated financial statements, business operations, or value chains, over the short, medium, or long term. | Generally adopted as proposed. Minor modifications made to the definition of “climate-related risks” and changing the relevant time horizons to short-term and long-term, consistent with existing MD&A requirements. |
| Impact on Strategy, Business Model and Outlook | How identified climate-related risks have affected or are likely to affect the registrant’s strategy, business model, and outlook, including how such impacts are considered as part of business strategy, financial planning, and capital allocation. | Generally adopted as proposed with addition of materiality qualifier. |
| Transition Plans | If a transition plan is adopted as part of the registrant’s 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. | Generally adopted as proposed with addition of materiality qualifier and safe harbor applicability. Disclosure only required if adopted a plan to manage a material transition risk. Final rules do not mandate that registrant adopt a transition plan. |

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| <p>Scenario Analysis</p> | <p>Any analytical tools (e.g., scenario analysis) used to assess the impact of climate-related risks on the registrant's business and financial statements, or to support the resilience of its strategy and business model in light of foreseeable climate-related risks.</p> | <p>Generally adopted as proposed with addition of materiality qualifier and safe harbor applicability.</p> |
| <p>Internal Carbon Price</p> | <p>If used as part of an emissions reduction strategy, details regarding the registrant's internal carbon price, how it is set and used, and the rationale for its use.</p> | <p>Generally adopted as proposed with addition of materiality qualifier and safe harbor applicability. Disclosure only required where use of internal carbon pricing is material to how a registrant evaluates and manages a climate-related risk. Eliminated the requirement to describe the rationale for selecting the internal carbon price applied.</p> |
| <p>Oversight and Governance</p> | <p>How the board and management exercise their oversight of climate-related risks and engage on the setting of climate-related targets and goals, as well as disclosure regarding climate-related expertise.</p> | <p>Adopted with modifications. Eliminated some of the more prescriptive requirements, including the identity of specific board members responsible for climate-risk oversight, whether any board member has expertise in climate-related risks, how frequently the board is informed of such risks, and information regarding whether and how the board sets climate-related targets or goals (including interim targets or goals). Will require disclosure of the relevant climate expertise of certain management members.</p> |
| <p>Risk Management</p> | <p>Process for identifying, assessing, and managing climate-related risks and whether any such processes are integrated into the registrant's overall risk management system.</p> | <p>Generally adopted as proposed with addition of materiality qualifier. Eliminated requirement to disclose if it has a separate board or management committee to assess and manage climate-related risks.</p> |

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| <p>Targets and Goals</p> | <p>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.</p> | <p>Generally adopted as proposed with addition of materiality qualifier and safe harbor applicability. Disclose climate-related targets or goals only if such targets or goals have materially affected or are reasonably likely to materially affect a registrant’s business, results of operations, or financial condition. Eliminated the proposal to disclose interim targets.</p> |
| <p>Carbon Offsets and Renewable Energy Credits</p> | <p>If used, the role that carbon offsets or renewable energy credits or certificates (RECs) play in the registrant’s climate-related business strategy, and the potential costs and risks associated with such offsets or RECs.</p> | <p>Adopted with modifications. Disclosure only required if they have been used as a material component of a registrant’s plan to achieve climate-related targets or goals.</p> |
| <p>GHG Emissions</p> | <p>GHG emissions data for the most recently completed fiscal year and for the historical fiscal years (to the extent available) included in the financial statements in the applicable filing, including:</p> <ul style="list-style-type: none"> • Scope 1 GHG emissions (i.e., from operations that are owned or controlled by the registrant) and Scope 2 GHG emissions (i.e., from the generation of purchased electricity, steam, heat, or cooling that is consumed by operations) metrics, separately disclosed, expressed both by disaggregated constituent GHGs and in the aggregate, and in absolute and intensity terms; and • 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 | <p>Scope 1 and 2 adopted with modifications. Scope 3 eliminated. Scope 1 and 2 disclosures confirmed subject to phase-in periods (see table below).</p> |

registrant has set a target or goal that includes its Scope 3 emissions.

Attestation Requirements over GHG Disclosure

Accelerated filers and large accelerated filers (including such filers that are FPIs) to provide an attestation report covering, at a minimum, Scope 1 and Scope 2 emissions and certain disclosures about the attestation service provider.

Adopted with modifications. See attestation compliance dates in table below. Not applicable to private companies in a business combination transaction involving a securities offering registered on Form S-4 or F-4.

Financial Statement Footnote Disclosure

New climate-related metrics and disclosure in a note to the financial statements, including disclosures regarding the financial impact of climate-related events (severe weather events, other natural conditions, and identified physical risks) and transition activities (including identified transition risks) on any relevant line items in the registrant's financial statements. The financial statement metrics would be subject to audit by the registrant's accounting firm and come within the scope of the registrant's internal control over financial reporting.

Adopted with modifications. Financial impact metrics not adopted. Final rule focused on disclosures of discrete expenditures, costs and charges related to severe weather events and other natural conditions that are already captured in the registrant's financial statements under GAAP. Disclosures remain subject to applicable 1% or certain de minimis disclosure thresholds.

PHASE-IN PERIODS

The final rules will become effective 60 days after publication in the Federal Register. As noted in the SEC adopting release, the final rules will be phased in for all registrants with the compliance date dependent upon the registrant's filing status and the content of the relevant disclosure as follows:

| COMPLIANCE DATES UNDER THE FINAL RULES ¹ | | | | | | |
|---|--|---|--------------------------------------|---|---|--|
| Registrant Type | Disclosure and Financial Statement Effects | | GHG Emissions/Assurance | | | Electronic Tagging |
| <i>All Reg. S-K and S-X disclosures, other than</i> | <i>Item 1502(d) (2), Item 1502(e) (2), and</i> | <i>Item 1505 (Scopes 1 and 2 GHG emissions)</i> | <i>Item 1506 – Limited Assurance</i> | <i>Item 1506 – Reasonable Assurance</i> | <i>Item 1506 – Reasonable Assurance</i> | <i>Item 1508 – Inline XBRL tagging for</i> |

| | <i>as noted in this table</i> | <i>Item 1504(c)(2)²</i> | | | | <i>subpart 1500³</i> |
|--------------------------------|-------------------------------|------------------------------------|----------|----------|----------|---------------------------------|
| LAFs | FYB 2025 | FYB 2026 | FYB 2026 | FYB 2029 | FYB 2033 | FYB 2026 |
| AFs (other than SRCs and EGCs) | FYB 2026 | FYB 2027 | FYB 2028 | FYB 2031 | N/A | FYB 2026 |
| SRCs, EGCs, and NAFs | FYB 2027 | FYB 2028 | N/A | N/A | N/A | FYB 2027 |

¹As used in this chart, “FYB” refers to any fiscal year beginning in the calendar year listed, “SRC” refers to smaller reporting company, “EGC” refers to emerging growth company, and “NAF” refers to non-accelerated filer.

²The requirements to provide quantitative and qualitative disclosures about material expenditures and material impacts to financial estimates and assumptions.

³Financial statement disclosures under Article 14 will be required to be tagged in accordance with existing rules pertaining to the tagging of financial statements. See Rule 405(b)(1)(i) of Regulation S-T.

VOTE, DISSENT AND EXPECTED LEGAL CHALLENGES

The final rules were approved by a 3-2 vote, with SEC Chair Gensler, Commissioner Crenshaw and Commissioner Lizárraga voting in favor of the final rules and Commissioner Peirce and Commissioner Uyeda voting against. In her dissent, Commissioner Peirce stated that she believes the final rules continue to have a fundamental flaw – giving special treatment and disproportionate space to climate-related disclosures. Consistent with that sentiment, the final rules are expected to face legal challenges. For more on these challenges and Chair Gensler’s recent comments regarding litigation risks, see [our blog post on February 28, 2024](#).

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