

SEC Issues Proposed Rules For Enhancement and Standardization of Climate-Related Disclosures

On Monday, March 21, 2022, the Securities and Exchange Commission (SEC) held an open meeting to consider proposed amendments to Regulation S-K and Regulation S-X to “enhance and standardize registrant’s climate-related disclosures for investors.” It has been over a decade since the SEC has considered and issued guidance on disclosures related to climate change and climate-related risks and opportunities. For many, the proposed amendments offer the long-awaited opportunity for consistency, comparability, and reliability in climate-related data and information shared by companies to investors. For others, however, the proposed amendments represent an increased burden and cost on companies and a drastic shift in the existing regulatory framework.

The proposed rules were approved by a vote of 3 to 1. This SEC Alert will provide a brief summary of the proposed amendments and highlight the main arguments of proponents and opponents. For more information, see SEC Release No. 33-11042 and the SEC Fact Sheet.

Proposed Amendments

The proposed amendments to Regulation S-K and Regulation S-X would require public companies to make additional climate-related disclosures in their periodic reports.

Regulation S-K

The proposed amendments would add a new subpart to Regulation S-K that would require disclosures regarding the following matters, among others:

- Oversight and corporate governance of climate-related risks by board and management;
- Impact of climate-related risks on financial statements;
- Effects of climate-related risks on business strategy, model, and outlook;
- Strategy and process for identifying, assessing, and managing climate-related risks;
- Integration of climate-related risks into risk management and other mitigating processes;
- Climate-related targets and goals including objectives, progress, and time horizons;
- Transition plan including metrics and targets;
- Scenario analysis to assess the resiliency to climate-related risks; and
- Measurement of greenhouse gas emissions.

The proposed amendments would be phased in based on the registrant’s status as a large accelerated filer, accelerated filer, non-accelerated filer, or small reporting company (SRC). For example, there would be an exemption for SRCs for disclosures related to greenhouse gas emissions from upstream and downstream activities in its value chain (Scope 3).

Regulation S-X

The proposed amendments to Regulation S-X would require public companies to disclose in the notes to their financial statements disaggregated financial metrics on climate-related risks that are derived from line items in the financial statements. Such disclosures would be complimentary to narrative disclosures describing the methodology behind metrics such as inputs, assumptions, and policy decisions by the company. For example, companies would be required to disclose the impact of climate-related events such as severe weather or natural conditions and other activities on their financial statements.

The proposed amendments to Regulation S-X would also require companies to provide an attestation report on the climate-related disclosures in their registration statements and annual



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reports. If the company is a large accelerated and accelerated filer, the proposed amendments require the company to provide an attestation report for, at a minimum, direct greenhouse gas emissions (Scope 1) and indirect emissions from purchased electricity or other forms of energy (Scope 2). The attestation report must be prepared by an independent greenhouse gas attestation provider who would be required to meet the proposed definition of expert with significant experience in attesting, measuring, and reporting on greenhouse gas emissions and adhere to the prevailing public standards on greenhouse gas emissions. In addition to providing the attestation report, the company would have to provide information related to the engagement of the attestation provider such as whether the provider was licensed, subject to oversight and engaged in certain recordkeeping practices.

There would be a phase-in period for compliance allowing for a one fiscal year transition period for limited assurance and a two fiscal year transition period to reasonable assurance. Also, there would be a one year difference in the phase-in requirements for large accelerated and accelerated filers.

Proponents and Opponents of the Proposed Amendments

Proponents argue that the amendments will reduce the information asymmetry between companies and investors, promote the consistency, comparability and reliability of climate-related data and disclosures, and contribute to capital formation. Proponents believe that compliance with the proposed amendments will cause minimal costs on companies given the phased in transition period.

Meanwhile, opponents believe that the amendments will impose significant costs on companies and decrease consistency, comparability, and reliability of climate-related data and disclosures by encouraging subjectivity and assumptions. Further, opponents suggest that to adopt the proposed amendments would require the SEC to exceed its statutory limits and possibly even conflict with the First Amendment rights under the U.S. Constitution.

We look forward to analyzing all of these issues and positions in the coming months.

Comment Period

The comment period for the proposed amendments will be open for 30 days after the rules are published in the Federal Register, or May 20, 2022, whichever period is longer. The SEC is encouraging comments having noted that approximately 600 unique comment letters were received in response to then-Acting Chair Allison Herren Lee's statement on climate disclosures in March 2021.
