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SEC Proposes Expanded Climate-Related Disclosure

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On March 21, the SEC proposed rules[1] on the enhancement and standardization of climate-related disclosures in reporting companies' registration statements and annual reports. The proposed rules build on guidance[2] provided in 2010 on climate change-related disclosures. If adopted, the proposed rules would require extensive new quantitative and qualitative disclosure for reporting companies via Regulations S-K and S-X. The proposed rules are segmented into three parts: (1) disclosures to address reporting companies' climate-related risk factors and associated governance practices; (2) a multi-layered calculation and reporting scheme for greenhouse gas ("GHG") emissions; and (3) consistent standards for publicly-stated climate-related goals and targets. If adopted, the disclosure requirements would be phased-in starting in fiscal year 2023 based on filer status.

Content of Proposed Disclosures

Climate-Related Disclosures:

If adopted, the proposed rules would require specific disclosures about a registrant's climate-related risk factors and their likely or actual material impact on the business as well as the registrant's associated governance and risk management practices to address those risk factors. Specific required disclosures under the proposed rules include:

- The oversight and governance of climate-related risks by the registrant's board and management;
- How any climate-related risks identified by the registrant have had or are likely to have a material impact on its business and consolidated financial statements, 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;
- The registrant's processes 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;
- If the registrant has adopted a transition plan as part of its climate-related risk management

strategy, a description of the plan, including the relevant metrics and targets used to identify and manage any physical and transition risks;

- If the registrant uses scenario analysis to assess the resilience of its business strategy to climate-related risks, a description of the scenarios used, as well as the parameters, assumptions, analytical choices, and projected principal financial impacts;

- If a registrant uses an internal carbon price, information about the price and how it is set; and

- The impact of climate-related events (severe weather events and other natural conditions) and transition activities on the line items of a registrant's consolidated financial statements, as well as the financial estimates and assumptions used in the financial statements.

GHG Emissions Disclosures:

In perhaps its most onerous segment, the proposed rules would require reporting companies to disclose additional information about their GHG emissions, independent of material or foreseeable risk to the company's operations or financial condition. The definition and metrics for GHG emissions disclosure would largely borrow from pre-existing TCFD and EPA concepts, but are additional and independent requirements. Depending on a reporting company's filer status, these disclosures could involve direct, indirect, upstream, and downstream emissions and may require accompanying attestation reports. Specific disclosures would address:

- The registrant's direct GHG emissions ("Scope 1") and indirect GHG emissions from purchased electricity and other forms of energy ("Scope 2"), separately disclosed, expressed both by disaggregated constituent GHG emissions and in the aggregate, and in both absolute terms, not including offsets, and in terms of intensity (per unit of economic value or production);

- Indirect emissions from upstream and downstream activities in a registrant's value chain ("Scope 3"), if material, or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions, in absolute terms, not including offsets, and in terms of intensity; and

- Large accelerated filers and accelerated filers would be required to have Scope 1 and Scope 2 disclosures included in their audited financial statements, phased in beginning with fiscal year 2023 (filed in 2024).

Climate-Related Targets and Goals:

If a reporting company has publicly stated climate-related targets or goals (such as those related to GHG emissions, water usage, energy usage, or conservation or ecosystem restoration), the proposed rules would require a description of those targets and/or goals in subsequent SEC disclosures, including:

- The scope of activities and emissions included in the target, the defined time horizon by which the target is intended to be achieved, and any interim targets;

- How the registrant intends to meet its climate-related targets or goals;
- Relevant data to indicate whether the registrant is making progress toward meeting the target or goal and how such progress has been achieved, with updates each fiscal year; and
- If carbon offsets or renewable energy certificates ("RECs") have been used as part of the registrant's plan to achieve climate-related targets or goals, certain information about the carbon offsets or RECs, including the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECs.

Implementation:

The proposed rules would require a registrant to:

- Provide the Regulation S-K mandated climate-related disclosure in its registration statement and/or annual report;
- Provide the Regulation S-X mandated climate-related financial statement metrics to its consolidated financial statements; and
- For accelerated and large accelerated filers, obtain independent attestation reports addressing Scope 1 and Scope 2 GHG.

Phase-In Periods and Applicability:

	Large Accelerated Filer	**Accelerated Filer**	**Non-Accelerate**
All Proposed Disclosures			
All proposed disclosures	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)	Fiscal year 2024 in 2025)
GHG Disclosures			
Scopes 1 and 2 GHG			
• Disclosure Compliance Date	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)	Fiscal year 2024 in 2025)
• Limited Assurance	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)	Exempted
• Reasonable Assurance	Fiscal year 2026 (filed in 2027)	Fiscal year 2027 (filed in 2028)	Exempted
Scope 3 and associated intensity metric	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)	Fiscal year 2025 in 2026)

Next Steps

The proposed rules are subject to a comment period of at least 60 days. In light of the proposed rules, reporting companies should consider how their business is impacted by climate risk factors and if their governance and risk-management processes adequately address those risks. They should also assess whether and how their business activities generate GHG emissions and better familiarize themselves with GHG reporting protocols developed by the TCFD and EPA. In addition, reporting companies should assess their pre-existing public statements on climate-related goals and targets with an eye towards the reporting requirements they may generate if the proposed rule is adopted.

FOOTNOTES

[1] See The Enhancement and Standardization of Climate-Related Disclosures for Investors, available at https://www.sec.gov/rules/proposed/2022/33-11042.pdf, (March 21, 2022).

[2] See Commission Guidance Regarding Disclosure Related to Climate Change, available at https://www.sec.gov/rules/interp/2010/33-9106.pdf (February 2, 2010).

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