SEC Proposal on Climate-Related Disclosures

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On March 21, 2022, the Securities and Exchange Commission voted 3-1 to propose rule amendments to the financial reporting requirements (Regulation S-X) and the narrative disclosure requirements (Regulation S-K) that would require both domestic and foreign registrants to include certain climate-related information in their registration statements and periodic reports (e.g., Form 10-K). Although the SEC's efforts to require public companies to provide investors with environmental risk-related information date back to the 1970s, the proposed amendments would mark a significant step forward in such efforts. The SEC's proposal is partially modeled after the disclosure frameworks of the Task Force on Climate-Related Financial Disclosures and the Greenhouse Gas Protocol with which some companies already voluntarily comply.

According to SEC Chair Gary Gensler, the proposal's intent is two-fold: 1) to address the needs of investors concerned about the potential impacts of climate-related risks to individual businesses by enhancing and standardizing climate-related disclosures, and 2) meeting the needs of companies to "more efficiently and effectively disclose [climate] risks and meet investor demand." Some, including lone dissenter Commissioner Hester Peirce, see the current proposal as an overreach of the statutory authority delegated to the SEC — one that will likely lead to legal challenges. Peirce argued in her dissent that the proposal "turns the disclosure regime on its head." According to her, instead of providing "investors with an accurate picture of the company's present and prospective performance through managers' own eyes," the proposal "forces investors to view companies through the eyes of a vocal set of stakeholders, for whom a company's climate reputation is of equal or greater importance than a company's financial performance."

Required Disclosures Under the SEC's Proposal

Perhaps the most significant aspect of the SEC's proposal would be the requirement that public companies disclose their direct and indirect greenhouse gas emissions (designated as Scope 1 and Scope 2 emissions, respectively), and additionally for some, the GHG emissions from upstream and downstream activities in a company's value chain (Scope 3). Scope 1 emissions would cover GHG emissions attributable to sources controlled or owned by a company while Scope 2 emissions refer to emissions that result from a company's purchase of various types of energy (e.g., electricity). Both disclosures of Scope 1 and 2 emissions would have to be expressed by disaggregated constituent greenhouse gases as well as in the aggregate, in absolute terms (not including offset), and in terms of intensity (per unit of economic value or production).

Disclosure of Scope 3 emissions would only be required if deemed material or if a company has set a reduction target or goal regarding such emissions. A safe harbor for liability for Scope 3 emissions disclosures is provided under the proposal in addition to an exemption from the requirement for smaller reporting companies. The safe harbor would protect a registrant provided that it could not be shown that such registrant's Scope 3 emissions disclosure was made (or reaffirmed if prepared by a third party) without a reasonable basis or was disclosed other than in good faith.

Under the SEC's proposed amendments, accelerated filers and large accelerated filers would be required to submit an attestation report covering disclosures of Scope 1 and 2 emissions. Such reports would have to be prepared by independent attestation service providers and meet certain minimum standards set by the SEC.

Other requirements resulting from the proposed amendments include disclosing information in a separately captioned section of annual reports and registration statements regarding:

- (for companies using internal carbon pricing) the price and how it is set;
- a registrant's governance of climate-related risks and relevant risk management processes, including expertise in climate-related risks;
- any actual or likely material impacts (whether manifested over the short, medium or long-term) on a registrant's business and consolidated financial statements as a result of any identified climate-related risks;
- any actual or likely effects on a registrant's strategy, business model, and outlook resulting from identified climate-related risks; and
- a new footnote to a registrant's audited financial statements addressing the impact of climate-related events (e.g., severe weather events) and transition activities on line items in its consolidated financial statements, including impacts on financial estimates and assumptions in such statements.

Furthermore, the proposal would require companies that currently conduct scenario analysis, have developed transition plans, or publicly announce climate-related targets or goals to disclose certain information to investors to enable them to understand such company efforts. For companies that use scenario analysis to ascertain the resilience of their business strategies to climate-related risks, they would need to provide investors with a description of the scenarios used, along with the parameters, assumptions, analytical choices, and projected principal financial impacts. Companies with developed transition plans would be obligated to disclose a description of such plans, including the applicable metrics and targets utilized to identify and manage any physical and transition risks.[1] Registrants that have set climate-related goals would be required to disclose the scope, time horizon, interim targets, progress (to be updated each fiscal year), and course chosen to accomplish such goals. Further, if the registrant used carbon offsets or renewable energy certificates in its plan to achieve its goals, the proposal would require disclosure of certain information regarding the use of such carbon offsets or RECs.

Phase-In Periods

If finalized, the rule amendments include phase-in periods for all registrants based upon a registrant's filer status. Additionally, there would be extended phase-in periods for Scope 3 emissions disclosures and, as it relates to accelerated filers and large accelerated filers, for third-party attestation requirements. Assuming the SEC's proposal is adopted with an effective date in December 2022 and

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[1] Examples of physical risks are climate-related disasters such as wildfires, hurricanes and floods, in addition to chronic and more gradual impacts from long-term temperature increases and sea level rise. Whereas transition risks include the potential adoption of climate-related regulatory policies, climate-related litigation and competition associated with technological innovation.

a filer's fiscal year-end is December 31st, the following tables provide the compliance dates by registrant type.

Registrant Type	Disclosure Compliance Date	
	all proposed disclosures, including GHG emissions metrics: Scopes 1 & 2	GHG emissions metrics: Scope 3
Large Accelerated Filer	FY 2023 (filed in 2024)	FY 2024 (filed in 2025)
Accelerated Filer & Non-Accelerated Filer	FY 2024 (filed in 2025)	FY 2025 (filed in 2026)
Smaller Reporting Company	FY 2025 (filed in 2026)	Exempted

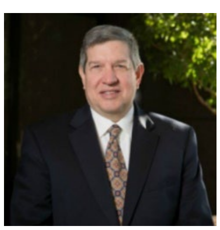
Filer Type	Scopes 1 & 2 GHG Disclosure Compliance Date	Limited Assurance	Reasonable Assurance
Large Accelerated Filer	FY 2023 (filed in 2024)	FY 2024 (filed in 2025)	FY 2026 (filed in 2027)
Accelerated Filer	FY 2024 (filed in 2025)	FY 2025 (filed in 2026)	FY 2027 (filed in 2028)

In light of the proposed amendments potentially taking effect (for some as early as fiscal year 2023), such companies should begin to consider how to capture all the 2023 data and information that would be required to comply with the SEC's proposal. Moreover, and regardless of registrant type, all companies should begin evaluating how such amendments would impact their current disclosure-related procedures.

The Comment Period

The comment period will remain open until May 20, 2022. The proposal solicits both a general request for comment along with specific requests regarding various aspects of the SEC's proposal.

For questions regarding the SEC's proposed amendments for climate-related disclosures and related changes, please contact your GableGotwals attorney or a member of our Corporate & Securities team.



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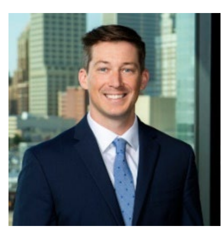

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