

Publications

SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures

Related Professionals

Theron C. Anderson

Adam K. Brandt

Adam L. Miller

Chadwick P. Reynolds

Kimberly J. Schaefer

J. Bret Treier

Anthony D. Weis

Related Services

Corporate and Business
Organizations

Securities Law Compliance

CLIENT ALERT | 3.30.2022

On March 21, 2022, the Securities and Exchange Commission (SEC) proposed amendments to Regulation S-K and Regulation S-X to require registrants to disclose climate-related information in registration statements, annual reports on Form 10-K and audited financial statements filed with the SEC. These proposed rules represent the SEC's latest effort to advance the climate agenda of the Biden Administration, which describes climate change as "systematic to our economy and financial system."

Purpose of Proposed Amendments

The stated purpose of the proposed amendments to Regulation S-K and Regulation S-X is to provide investors with more information about climate-related risks and the related potential financial consequences for investors to consider in making investment and voting decisions.

Proposed Amendments to Regulation S-K

Greenhouse Gases Emissions Disclosure Requirements

The most significant proposed amendment to Regulation S-K would require registrants to disclose certain information regarding their greenhouse gases (GHG) emissions based on the emissions scope definitions set forth in the GHG Protocol, a global GHG accounting standard that provides standards and guidance for companies seeking to calculate their GHG emissions. The proposed rules would require registrants to disclose their total Scope 1 emissions (direct) and total Scope 2 emissions (indirect from production of energy used in business). Disclosure of Scope 3 emissions (all other indirect emissions not accounted for in Scope 2) would only be required if those emissions are material or if a registrant has set a GHG emissions reduction target or goal that includes its Scope 3 emissions.

The Scope 3 emissions disclosure requirement would be subject to the following additional limitations:

- smaller reporting companies would be exempt from the disclosure requirement;
- all other registrants would have an additional year to comply with the Scope 3 emissions disclosure requirement beyond the overall compliance date of the proposed rules;
- registrants would not have any liability under federal securities law for disclosure relating to Scope 3 emissions unless the disclosure was made or reaffirmed without a reasonable basis or was not made in good faith; and
- an accommodation will be made for information that is unknown or not reasonably available.

Greenhouse Gases Emissions Attestation Report

Accelerated filers and large accelerated filers would also be required to include an attestation report covering its disclosure of Scope 1 and Scope 2 emissions and provide certain information regarding the attestation service provider. The attestation report would be required to identify the subject matter on which the attestation provider is reporting, the period of time to which the evaluation of the subject matter relates, the criteria used to evaluate the subject matter, the level of assurance provided by the attestation service provider, and the attestation standard(s) used. The subject matter of the attestation report would include the registrant's Scope 1 and Scope 2 emissions disclosures and any additional items the registrant voluntarily presented for attestation. The attestation service provider used by the registrant would need to have significant experience, as defined in the proposed rules, with GHG emissions and be independent of the registrant.

The proposed rules provide a transition period to allow applicable registrants time to acclimate to the new requirements. The proposed transition periods would provide existing accelerated filers and large accelerated filers one additional fiscal year, after the compliance date applicable to the Scope 1 and Scope 2 disclosures, to transition to providing limited assurance and two additional fiscal years to transition to providing reasonable assurance. Limited assurance is equivalent to the level of assurance provided with respect to a registrant's interim financial statements included in a Form 10-Q. Reasonable assurance is equivalent to the level of assurance provided in an audit of a registrant's consolidated financial statements included in a Form 10-K.

Climate-Related Risks Disclosure Requirements

The proposed rules would also require registrants to disclose any climate-related risks reasonably likely to have a material impact on the registrant's business or consolidated financial statements at a line-item level. "Climate-related risks" means the actual or potential negative impacts of climate-related conditions and events on the registrant's business. Registrants would be required to disclose risks which may manifest over a short-, medium-, or long-term horizon. The proposed rules would grant registrants the discretion to define each horizon.

The proposed rules would also require disclosure of how climate-related risks have affected or are likely to affect the registrant's strategy, business model, and outlook over the short-, medium-, and long-term, including the registrant's use of carbon offsets, renewable energy credits, internal carbon pricing, or scenario-analysis for climate-related issues.

Any process used by a registrant for identifying, assessing, and managing climate-related risks would require disclosure under the proposed rule. The SEC recommends that registrants adopt a transition plan in connection with their risk management strategy focused on mitigating or adapting to climate-related

risks, particularly if the registrant operates in a jurisdiction that has made commitments under the Paris Agreement to reduce its GHG emissions. If a registrant has adopted a transition plan, the proposed rules would require a description of the plan, including the relevant metrics and targets used to identify and manage physical and transition risks.

Climate-Related Policies, Targets and Goals Disclosure Requirements

The proposed rules would also require registrants to disclose the oversight and governance policies and practices of the board and management applicable to climate-related risks. This requirement is similar to the SEC's existing corporate governance disclosure rules.

Finally, the registrant would also be required to provide certain information about any climate-related targets or goals set by the registrant.

The proposed Regulation S-K amendments would be set forth in a new Subpart 1500 and require a separately captioned "Climate-Related Disclosure" section in the registration statements and annual reports of the registrant.

Proposed Amendments to Regulation S-X

If a registrant is required to include the disclosure required by new Subpart 1500 of Regulation S-K in a form that also requires audited financial statements, the registrant would also be required to disclose in a note to its financial statements certain disaggregated climate-related financial statement metrics. The proposed financial statement metrics would consist of disaggregated climate-related impacts on existing financial statement line items.

In particular, the proposed rules would require disclosures relating to the following metrics: (i) financial impact metrics when climate-related events (e.g., severe weather, other natural conditions, and transition activities) impact any relevant line item in the registrant's consolidated financial statements; (ii) expenditure metrics when climate-related events require a registrant to expense expenditures or incur capitalized cost; and (iii) financial estimates and assumptions when risks or uncertainties associated with climate-related events impact the estimates or assumptions a registrant uses to produce the consolidated financial statements. For each of the foregoing metrics, the proposed rules would require the registrant to disclose contextual information to enable a reader to understand how it derived the metric, including a description of significant assumptions used, and if applicable, policy decisions made by the registrant to calculate the specified metrics.

This Regulation S-X amendment would be set forth in a new Article 14.

Timing of Proposed Amendments

If the proposed rules are adopted with an effective date of December 2022 and the registrant has a December 31 fiscal year-end, the compliance dates will be as follows:

- Large Accelerated Filers
 - Fiscal year 2023 (filed in 2024) for all proposed disclosures excluding scope 3 GHG emissions;

- Fiscal year 2024 (filed in 2025) for (i) scope 3 GHG emissions disclosures (if required) and (ii) limited assurance attestation of scope 1 and scope 2 GHG emissions disclosures; and
- Fiscal year 2026 (filed in 2027) for reasonable assurance attestation of scope 1 and scope 2 GHG emissions disclosures.
- Accelerated and Non-Accelerated Filers
 - Fiscal year 2024 (filed in 2025) for all proposed disclosures excluding scope 3 GHG emissions;
 - Fiscal year 2025 (filed in 2026) for (i) scope 3 GHG emissions disclosures (if required) and (ii) for accelerated filers only, limited assurance attestation of GHG emissions disclosures (non-accelerated filers would be exempt from the attestation requirements); and
 - For accelerated filers only, fiscal year 2027 (filed in 2028) for reasonable assurance attestation of GHG emissions disclosures.
- Smaller Reporting Companies
 - Fiscal year 2025 (filed in 2026) for all proposed disclosures other than scope 3 GHG emissions disclosures (smaller reporting companies would be exempt from the requirements to provide scope 3 GHG emissions disclosures or independent attestation).

A registrant with a different fiscal year-end date that results in its fiscal year 2023 commencing before a December 2022 effective date would not be required to comply with Subpart 1500 of Regulation S-K or Article 14 of Regulation S-X until its following fiscal year.

The comment period for the proposed rules will remain open for 30 days after publication in the Federal Register, or until May 20, 2022 (60 days after the date of issuance and publication on sec.gov), whichever period is longer.

The SEC's proposed rule release is available [here](#).

Vorys represents issuers and investors in nearly all aspects of federal and state securities law compliance and nearly all types of public and private securities and capital markets transactions. Please visit our website to obtain more information regarding our [Federal and State Securities Law Compliance](#) and [Public and Private Securities Offerings](#) practices.