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SEC Proposes New Climate-Related Disclosures

The SEC has proposed [amendments to Regulations S-K and S-X](#) to require domestic and foreign issuers to disclose, in registration statements, annual reports on Form 10-K and the audited financial statements filed with the SEC, certain climate-related information encompassing oversight and governance, material risks and opportunities, data regarding greenhouse gas (GHG) emissions, climate-related financial statement metrics, and information about a company's climate-related targets, goals and transition plans (if any). Larger issuers will be required to provide third-party attestation on their Scopes 1 and 2 emissions. The proposed rules will generally be phased in over three years beginning 2023 for large accelerated filers; "smaller reporting companies" would be exempted from Scope 3 disclosures. Attestation would be phased in from 2024.

The proposed rules, if adopted, would amend Reg. S-K to require disclosure about:

- Board and management oversight and governance of climate-related risks (including describing expertise in climate-related risks);
- Material climate-related risks and opportunities that may manifest over the short-, medium- or long-term, including impact on corporate strategy, business model and outlook, as well as the company's processes for identifying, assessing and managing climate-related risks;
- Scopes 1 and 2 emissions (with separate disclosure that disaggregates constituent greenhouse gases from aggregated emissions, breaks out GHG intensity measures from absolute measures, and addresses offsets), and Scope 3 emissions, if material, or if the issuer has set Scope 3 emissions targets;
- If used, internal carbon pricing;
- If adopted or used, transition plans (broadly defined to reach "the registrant's strategy and implementation plan to reduce climate-related risk," including relevant metrics or targets used to manage physical and transition risks) and scenario analyses (including underlying assumptions and projected principal financial impacts); and
- Independent attestation on Scopes 1 and 2 emissions for large and accelerated filers (with limited assurance requirements phased in beginning 2024 and reasonable assurance requirements phased in beginning 2026).

The proposed rules would also amend Reg. S-X to require a financial statement note disclosure of disaggregated climate-related events and transition activities on the line items of a registrant's audited consolidated financial statements, including the financial estimates and assumptions used as well as financial impact and expenditure metrics. These items would be subject to the audit of the independent registered public accounting firm and come within the scope of the company's internal control over financial reporting. Historical fiscal year period metrics, in addition to current period metrics, would also be required to be calculated and disclosed in certain instances.

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For companies that have set climate-related targets, the proposed rules would require disclosure on scope, time horizon, progress, pathways to reaching such targets (including interim targets) and use of carbon offsets or renewable energy certificates. The proposed rules include some safe harbors for Scope 3 emissions disclosures and forward-looking statement safe harbors.

Investors have long called for comparable and consistent climate-related disclosures. Issuers, facing a myriad of disclosure frameworks in recent years, have also sought greater clarity and certainty on disclosure expectations. The rules proposed by the SEC mark a significant move to address and balance issuer and investor concerns on an issue that will impact the long-term value of all businesses, albeit in different ways. The rules will undoubtedly be subject to intense debate and, ultimately, legal challenge. In the meantime, investors will continue to expect issuers to make disclosures along the lines of the framework proposed by the Task Force on Climate-Related Financial Disclosures (TCFD), and since the proposed rules draw extensively on the TCFD's work, progress on those disclosures should help limit the burden of ultimately transitioning to the new rules.

The comment period will remain open for 60 days, until May 20, 2022. We encourage issuers of all sizes to review the proposed rules carefully and provide meaningful comment and input.

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