GIBSON DUNN

SEC Adopts Sweeping New Climate Disclosure Requirements for Public Companies

Client Alert | March 8, 2024

An Overview of the Highlights and Key Differences to the Proposed Rules On March 6, 2024, the Securities and Exchange Commission ("SEC" or "Commission"), in a divided 3-2 vote along party lines, adopted final rules establishing climate-related disclosure requirements for U.S. public companies and foreign private issuers in their annual reports on Form 10-K and Form 20-F, as well as for companies looking to go public in their Securities Act registration statements. The Commission issued the Proposing Release in March 2022, which we previously summarized here, and received more than 22,500 comments (including more than 4,500 unique letters) from a wide range of individuals and organizations. The Adopting Release is available here and a fact sheet from the SEC is available here. A summary table discussing in more detail the notable changes between the Adopting Release and the Proposing Release is provided below. ***We will provide more resources.*** Register here for Gibson Dunn's webcast covering key aspects of the final rules and litigation developments on Tuesday, March 12, 2024. Our review of the final rules and Adopting Release is ongoing. We will publish a revised and more detailed summary of the final rules and related topics. ***Overview of the final rules.*** The final rules will require disclosure in annual reports and registration statements of:

- **Material impacts on operations.** How any climate-related risks have had, or are reasonably likely to have, material impacts on a company's results of operations, strategy, or financial condition.
- **Impact on the company.** How any such climate-related risks have materially affected or are reasonably likely to materially affect a company's outlook, strategy, and business model, as well as a new financial statement note reporting expenditures and costs above a de minimis threshold resulting from severe weather events, other "natural conditions," and certain carbon offsets and renewable energy certificate**s** ("REC").
- **Risk management/oversight process.** Board and management governance and practices related to climate-related risk identification, assessment, management, and oversight.
- **GHG emissions and assurance.** Scope 1 and Scope 2 greenhouse gas ("GHG") emissions, if material, for accelerated and large accelerated filers only, with phased-in assurance by an independent GHG emissions attestation provider.
- **Targets/goals.** Information regarding climate-related targets or goals that have materially affected, or are reasonably likely to materially affect, the company's results of operations, business, or financial condition.
- **Mitigation efforts.** Transition plans to address material transition risks, scenario analyses used for assessing material climate-related risk impacts, and internal carbon pricing if its use is material to managing material climate-related risks.

Significant changes from the rule proposal. The Commission made several notable changes to the proposed requirements, including to:

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- eliminate Scope 3 GHG emissions reporting requirements;
- limit the requirement to report Scope 1 and 2 GHG emissions only if material, and exempt non-accelerated filers, smaller reporting companies and emerging growth companies from emissions reporting;
- prolong the phase-in period for third-party assurance requirements for emissions reporting, and require only large accelerated filers to eventually (by 2033) obtain attestation at a “reasonable assurance” level;
- remove the requirement to disclose directors’ climate-related expertise;
- limit the Regulation S-X (“Reg. S-X”) financial footnote requirement to (1) expenditures, charges, and losses incurred as a result of severe weather events and other natural conditions that are 1% or more of either net income before tax and/or stockholders’ equity, depending on whether such amounts are expensed or capitalized, and (2) carbon offsets and renewable energy credits that are a material component of a company’s plan to achieve its disclosed climate-related targets or goals; and
- adopt a new requirement to disclose, outside of the financial statements, the amount of material expenditures incurred as a result of any transition plan.

More broadly, the final rules adopt “materiality” qualifiers for many of the disclosure requirements, and the number of prescriptive disclosure requirements has been reduced. The preamble to the final rules also states that “traditional” notions of “materiality” will apply, as defined in Supreme Court precedents. Notwithstanding these changes, the final rules impose a significant reporting burden on companies and require substantial planning to prepare to comply. ***Compliance phase-in period.*** The final rules will become effective 60 days after publication in the Federal Register (available here). The requirement to comply with the final rules will phase in over time, based on a company’s filer status. Registration statements will be subject to these disclosure obligations based on the fiscal years being reported. The first required disclosures for U.S. public companies with a calendar-end fiscal year will begin with the annual report on Form 10-K filed in:

Disclosure Requirement	Large Accelerated Filers
Reg. S-K & Reg. S-X requirements other than:	2026 for FY 2025
Certain quantitative & qualitative disclosures under Items 1502(d)(2), 1502(e)(2), & 1504(c)(2)	2027 for FY 2026
Scopes 1 & 2 GHG Emissions**	2027 for FY 2026
Limited Assurance of GHG Emissions	2030 for FY 2029
Reasonable Assurance of GHG Emissions	2034 for FY 2033
Inline XBRL Tagging for Reg. S-K Requirements***	2027 for FY 2026

* This applies only to Accelerated Filers that are not also Smaller Reporting Companies or Emerging Growth Companies. ** Scope 1 & 2 GHG emissions for the most recent fiscal year may be reported as late as the second quarter Form 10-Q deadline. *** Reg. S-X requirements will be tagged with the first disclosure.

Disclosure Category	Proposing Release Standards	Adopting Re
Climate-Related Risk Oversight & Management *(Items 1501 & 1503, Reg. S-K)*	Describe climate-related risk oversight and management, including the role of the board in overseeing and management in assessing and managing climate-related risks, and related risk management processes.	**Adopted su** Notable Cha • Rem requi

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Climate-Related Risks and Impacts *(Item 1502, Reg. S-K)*	Describe material climate-related risks, including: • their impacts, timeframe, and nature, and how the company considers or incorporates them; • the business strategy's resilience against changes in climate-related risks, including use of scenario analyses; and • the company's transition plan(s) adopted for its management strategy for such risks, including relevant metrics, targets, and actions taken.	**Adopted wit** Notable Cha • Remo resilie • revise mana adop mana asses comp busin mate risks carbo • remo for th and p
GHG Emissions Reporting Disclosures *(Items 1504 & 1505, Reg. S-K)*	All companies must disclose Scope 1 and Scope 2 GHG emissions. All companies (except smaller reporting companies) must disclose Scope 3 GHG emissions if (i) material to the company or (ii) the company has set a GHG emissions target that includes Scope 3. Attestation is required for Scope 1 and Scope 2 for large accelerated and accelerated filers, subject to a phase in from limited assurance to reasonable assurance within two to four fiscal years after the compliance date. No attestation is required for Scope 3.	**Adopted, wi 1506.** Notable Cha • Elimi requi • limite disclo filers, voting signif • delay recen filing Form requi (or Fo • delay for Sc fiscal • limite assur only, year
Targets, Goals & Transition Plans Disclosures	Describe GHG emission or other climate-related targets or goals, including pathway to	**Adopted, wi**

(Item 1506, Reg. S-K)	achievement, progress made, and use of carbon offsets or RECs.	Notable Cha • Revis relate reaso finan than set a relate • adde impa (or ac
Climate-Related Financial Statement Disclosure *(Rules 14-01 and 14-02 of Reg. S-X)*	Disclose (i) climate-related financial metrics related to the impacts of severe weather events and activities to reduce GHG emissions or exposure to transition risks if the absolute value of those impacts or expenditures/costs, as applicable, represents at least 1% of its corresponding financial statement line item and (ii) the impact of climate-related events on estimates and assumptions. Disclosures must be provided for the company's most recently completed fiscal year and for each historical fiscal year included in the financial statements in the filing.	**Adopted wit** Notable Cha • Repla repre requi charg clima excee stock amou • repla costs and r cond any e cons impa plans sever • adde capit comp

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Gibson, Dunn & Crutcher's lawyers are available to assist in addressing any questions you may have about these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, or any of the following lawyers in the firm's Securities Regulation and Corporate Governance, Environmental, Social and Governance (ESG), Capital Markets, Administrative Law and Regulatory, and Environmental Litigation and Mass Tort practice groups: **Securities Regulation and Corporate Governance**: Elizabeth Ising – Washington, D.C. (+1 202.955.8287, eising@gibsondunn.com) James J. Moloney – Orange County (+1 1149.451.4343, jmoloney@gibsondunn.com) Lori Zyskowski – New York (+1 212.351.2309, lzyskowski@gibsondunn.com) Brian J. Lane – Washington, D.C. (+1 202.887.3646, blane@gibsondunn.com) Thomas J. Kim – Washington, D.C. (+1 202.887.3550, tkim@gibsondunn.com) Ronald O. Mueller – Washington, D.C. (+1 202.955.8671, rmueller@gibsondunn.com) Michael Scanlon – Washington, D.C.(+1

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