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March 21, 2024 | Number 3239

The SEC's Final Climate Disclosure Rules: Requirements, Practicalities, and Next Steps

The long-awaited rules, already at the center of political debate and litigation, represent another global regulatory effort to integrate climate considerations into financial reporting.

On March 6, 2024, nearly two years after its proposed rules were first released, the US Securities and Exchange Commission (the SEC or the Commission), in a 3-2 vote along party lines, approved final rules requiring companies to disclose certain climate-related information in registration statements and annual reports. The final rules are already the focus of litigation, with a number of parties on both sides of the policy debate filing petitions for review across the country. On March 15, 2024, the US Court of Appeals for the Fifth Circuit granted an administrative stay of the final rules in response to a request for review, as discussed in more detail in our [blog post](#). As a result of the administrative stay and in light of additional pending legal challenges, the timing of effectiveness of the final rules and applicable phase-in periods, as well as whether any portions of the rules are likely to remain in effect after the litigation, are all highly uncertain.

While the final rules have widely been described as scaling back the requirements that would have been in effect under the proposed rules, they still represent a historic expansion of US federal securities disclosure regulation, and, to the extent they remain in full force and effect, would likely significantly increase companies' reporting costs and compliance efforts. That being said, the Commission did make a number of strategic changes to the final rules; for example, in contrast to the proposed rules, the final rules do not require greenhouse gas (GHG) Scope 3 emissions disclosures, and no GHG emissions disclosures are required for smaller reporting companies (SRCs), emerging growth companies (EGCs), or non-accelerated filers (NAFs). Moreover, as mentioned above and described in more detail in our blog post, existing legal challenges to the rules may ultimately prove effective in carving back some or most of the final rules' requirements. The final rules are available [here](#), and will become effective 60 days after they are published in the Federal Register.

In this Client Alert, the Latham & Watkins ESG Practice: (i) explains the requirements set forth in the final rules; (ii) provides details on the differences between the proposed rules and the final rules; (iii) outlines a high-level summary on how the final rules are likely to influence the global climate reporting landscape; and (iv) sets forth practicalities and next steps for compliance.

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A Note on Materiality

As an initial matter, it is worth noting that the Commission has made liberal use of materiality qualifiers throughout the final rules, which stands in contrast to many of the brighter lines that would have been drawn under the proposed rules. In his speech during the open meeting at which the final rules were adopted, SEC Chair Gary Gensler referenced the Supreme Court's articulation of the meaning of materiality¹ and stated that the Court's definition "is this same materiality standard that is used throughout the final rules we're considering today." Materiality qualifiers have also been added to many substantive overarching categories of requirements, in addition to being added into subline requirements.

Throughout the adopting release, the Commission suggests that the presence of these materiality qualifiers will mitigate both the breadth of the rules and the cost of compliance. However, companies should be aware that with respect to both the breadth of the final rules and the potential cost of compliance, these materiality qualifiers each introduce the need for a separate process to assess materiality complete with internal controls around that assessment. These materiality assessments likely must be done in addition to materiality considerations companies undertake in response to either regulatory requirements in non-US jurisdictions or voluntary frameworks, all of which often use definitions of materiality that differ from the US federal securities law definition of materiality. For this and other reasons articulated below, the SEC's final climate rules still represent a significant regulatory expansion, and a potentially daunting undertaking for the companies required to comply.

The Final Rules

The final climate disclosure rules create a new subpart 1500 of Regulation S-K and Article 14 of Regulation S-X and, like the proposed rules, certain aspects of the final rules build on concepts contained in the Task Force on Climate-related Financial Disclosures (TCFD) reporting framework and the GHG Protocol.

The final rules generally apply to Exchange Act periodic reports and Securities Act and Exchange Act registration statements, and require companies that file their Exchange Act annual reports on Forms 10-K, as well as their Exchange Act and Securities Act registration statements on Form 10 and Form S-1, S-4 (with certain exceptions), or S-11, as applicable, to include the climate-related disclosures required by the final rules in these forms. The final rules will also require foreign private issuers that file their Exchange Act annual reports or registration statements on Form 20-F and their Securities Act registration statements on Form F-1 or Form F-4 (with certain exceptions) to provide the same climate-related disclosures as domestic companies.

In a change from the proposed rules, the final rules do not apply to private companies that are parties to business combination transactions. In addition, the final rules will not apply to Canadian registrants that use the MJDS and file their Exchange Act registration statements and annual reports on Form 40-F, and also will not apply to asset-backed securities issuers, as proposed. With the exception of the GHG emissions reporting, SRCs and EGCs are generally subject to the final rules. Other than the accommodations for EGCs, there are no additional exemptions or transitional relief for registrants engaged in an IPO. While the Commission acknowledges in the adopting release that certain commenters suggested that companies be able to substitute compliance with the final rules through disclosures made in response to requirements in other jurisdictions, such an accommodation was not adopted in the final rules.

A. Board and Management Oversight

Board oversight

Consistent with the TCFD framework, new Item 1501(a) will require a description of a board of directors' oversight of climate-related risks as well as the identification, if applicable, of any board committee or subcommittee responsible for the oversight of climate-related risks and a description of the processes by which the board or such committee or subcommittee is informed about such risks. In addition, if there is a target or goal disclosed pursuant to Item 1504, as discussed below, or a transition plan disclosed pursuant to Item 1502(e)(1), as discussed below, the final rules will also require disclosure of whether and how the board oversees progress against the target or goal or transition plan. Companies are also required to describe the processes by which the board or any board committee or subcommittee is informed about climate-related risks. Importantly, the Commission indicates in the adopting release that it chose not to include a materiality qualifier in these requirements because "[i]f a board of directors determines to oversee a particular risk, the fact of such oversight being exercised by the board is likely material to investors given other demands on the board's time and attention."

Management oversight

Similarly, the final rules will require disclosure regarding management oversight of climate-related risks under new Item 1501(b). Specifically, companies must describe management's role in assessing and managing climate-related risks, and they are expected to address, as applicable, a non-exclusive list of disclosure items when describing management's role,² including a description of the relevant expertise of position holders or members responsible for assessing and managing climate-related risk.

B. Material Climate-Related Risks and Impacts

Climate-related risks

Under new Item 1502(a), a company will be required to disclose any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the company, including on its business strategy, results of operations, or financial condition. The final rules use similar definitions and are based on the climate-related disclosure framework of the TCFD, defining "climate-related risks" to mean the actual or potential negative impacts of climate-related conditions and events on the company's business, results of operations, or financial condition. Both physical and transition risks are included. Physical risks include both acute and chronic risks, and transition risks are generally defined as risks attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks.³

For climate-related risks so identified, the company must (i) disclose whether the risk is a physical or transition risk, and whether such risks are reasonably likely to manifest in the short term (i.e., the next 12 months) and separately in the long term (i.e., beyond the next 12 months); (ii) provide information necessary to an understanding of the nature of the risk presented; (iii) describe the extent of the company's exposure to the risk; and (iv) disclose certain additional details set forth in non-exclusive lists⁴ regarding the nature of the risk.

With respect to transition risks, if a company operates in a jurisdiction that has made a GHG emissions reduction commitment, the company is expected to consider whether it may be exposed to a material transition risk related to implementation of the commitment. Moreover, under new Item 1502(d)(1), the company will be required to discuss how any climate-related risks identified in response to Item 1502(a) have actually materially impacted or are reasonably likely to materially impact the company's business, results of operations, or financial condition.

Material impacts

Under new Item 1502(b), a company will be required to describe the actual and potential material impacts of any climate-related risks identified in response to Item 1502(a) on the company's strategy, business model, and outlook. The final rules provide a non-exclusive list of potential material impacts.⁵ This list includes the identification of activities undertaken to mitigate or adapt to climate-related risks, including the adoption of new technologies or processes, and under new Item 1502(d)(2), companies must quantitatively and qualitatively describe the material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from activities undertaken to mitigate or adapt to climate-related risks, including the adoption of new technologies or processes. Finally, Item 1502(c) will require companies to discuss whether and how they consider any material impacts described in response to Item 1502(b) as part of their strategy, financial planning, and capital allocation.

Importantly, value chain impacts are not directly included in the climate-related risks assessments and disclosures required by the final rules as they would have been specifically required by the proposed rules. However, it is possible that to the extent value chain impacts might have an indirect material impact on the company, such disclosure may still be deemed required.

C. GHG Emissions and Attestation

The final rules, under new Item 1505, will require disclosure of Scope 1 and Scope 2 emissions by large accelerated filers (LAFs) and accelerated filers (AFs), to the extent such emissions are material. SRCs, EGCs, and NAFs are not subject to the GHG emissions reporting requirement under the final rules. If either or both of Scope 1 and Scope 2 emissions are material, that Scope must be disclosed, and must be disclosed in the aggregate in terms of CO₂e. In addition, if a company is required to disclose its Scope 1 and/or Scope 2 emissions, and any constituent gas of the disclosed emissions is individually material, it must also disclose such constituent gas disaggregated from the other gases. A company that is required to disclose its Scope 1 and/or Scope 2 emissions must disclose those emissions in gross terms by excluding the impact of any purchased or generated offsets. In a noteworthy move, the Commission declined to include Scope 3 emissions at this time.

Under Item 1505(b), companies that will be required to disclose emissions will also be required to describe the methodology, significant inputs, and significant assumptions used to calculate the company's disclosed GHG emissions, and are required to disclose the organizational boundaries used, and method used to determine such boundaries, when calculating their emissions. This disclosure must include a brief explanation of any material difference between the scope of entities and operations included in the consolidated financial statements and those used for reporting GHG emissions. Further, a brief description (and in each case in sufficient detail for a reasonable investor to understand) of the protocol or standard used to report the GHG emissions is required, including the calculation approach, the type and source of any emission factors used, and any calculation tools used to calculate the GHG emissions. When calculating GHG emissions, reasonable estimates may be used, as long as underlying assumptions, and the reasons for using said estimates, are described.

The Commission notes in the adopting release that materiality should not be determined merely by the amount of the emissions, but by a consideration of whether a reasonable investor would consider disclosure of the information important when making an investment or voting decision. For example, a company's emissions may be material because of material transition risks associated with reporting their GHG emissions under foreign or state law, subjecting the company to additional regulatory burdens or penalties. A company's emissions may also be material because they inform progress toward achieving a target or goal or a transition plan that the company is required to disclose under the final rules.

Timing

Under Item 1505(c), once a company is required to disclose its emissions, it must disclose those emissions for its most recently completed fiscal year and, to the extent previously disclosed in a Commission filing, for the historical fiscal year(s) included in the consolidated financial statements included in the filing. The final rules also provide that any GHG emissions metrics required to be disclosed pursuant to Item 1505 in an annual report filed with the Commission on Form 10-K may be incorporated by references from the company's Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions metrics disclosure relates.

For foreign private issuers, the GHG emissions metrics required to be disclosed may be disclosed in an amendment to their annual report on Form 20-F, which is due no later than 225 days after the end of the fiscal year to which the GHG emissions metrics disclosure relates. Any company using the flexibility to provide the required GHG emissions disclosure later in the year must include a statement in its annual report indicating its intention to incorporate by reference or amend its filing for this information. With respect to registration statements, the final rules state that the GHG emissions metrics must be provided as of the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement.

Attestation

The final rules, under new Item 1506(a), will require companies that are required to provide GHG emissions disclosure under new Item 1505 to include an attestation report covering the GHG emissions disclosure in the relevant filing. The attestation requirements are similarly limited to LAFs and AFs and are subject to phase-in periods, as described in additional detail below.

The final rules provide that the attestation report must be provided pursuant to standards that are established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment, and are either publicly available at no cost or widely used for GHG emissions assurance (Item 1506(a)(2)). The Commission notes in the adopting release that it explicitly permits four standards to be used by assurance providers for the purposes of providing Item 1506 assurance: AICPA, PCAOB, IAASB, and ISO standards. The final rules (Item 1506(c)) also require the form and content of the GHG emissions attestation report to follow the requirements set forth by the attestation standard or standards used, as proposed; however, in a shift from the proposed rules, the final rules generally do not prescribe minimum report requirements.⁶ In the adopting release, the Commission acknowledges that "auditing standards for financial statement audits are more established after decades of development and required use," but points to current developments around GHG emissions assurance as evidence that the market is "far from nascent" and that GHG emissions assurance "is now expected by many market participants."

The final rules will also require certain additional information related to the attestation of a company's GHG emissions. Specifically, under new Item 1506(d), companies will be required to disclose whether the GHG emissions attestation engagement, or the GHG emissions attestation provider, is subject to any oversight inspection program, as well as certain additional information when there is a change in, and disagreement with, the company's GHG emissions attestation provider (modeled after the disclosure requirements in Item 4.01 of Form 8-K and Item 304 of Regulation S-K). Companies are also required under amendments to Item 601 of Regulation S-K to file as an exhibit to certain registration statements or Forms 10-K or 10-Q a letter from the attestation provider that acknowledges its awareness of the use in certain filings of its reports which are not otherwise subject to consent; similar requirements are also now incorporated into instructions to the Exhibits section of Form 20-F. This requirement is limited to the context in which the attestation provider is providing limited assurance, as under reasonable assurance,

the attestation provider will be required to submit a consent in connection with section 7 of the Securities Act, with Section 11 liability similarly attaching to such reasonable assurance.

The final rules require both AFs and LAFs to obtain limited assurance beginning the third fiscal year after the compliance date for Item 1505, and only LAFs are required to obtain an attestation report at a reasonable assurance level beginning the seventh fiscal year after the compliance date for Item 1505.

Attestation provider requirements

New Item 1506(b) contains expertise and independence requirements with respect to GHG emissions attestation providers. Importantly, attestation providers are not required to be CPAs, are not required to have a minimum number of years of experience, and are not required to themselves be regulated entities or members of any specified accreditation body. The independence requirements are modeled after the independence requirement and relevant definitions of the Commission's qualifications for accountants under Rule 2-01 of Regulation S-X, and generally provide that a GHG emissions attestation provider is not independent if such provider is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that such provider is not, capable of exercising objective and impartial judgment on all issues encompassed within the provider's engagement.

In assessing whether a provider is independent, the Commission will take into consideration mutual or conflicting interest between the attestation provider and the company (or any of its affiliates) as well as all relevant circumstances, including all financial or other relationships between the attestation provider and the company (or any of its affiliates). In the adopting release, the Commission indicates that "it would be difficult for an expert that has assisted a registrant in calculating or preparing its GHG emissions data to meet the independence requirements because such an engagement would presumably place the attestation provider in the position of attesting to its own work and may create a mutual interest between the attestation provider and the registrant." The adopting release also specifically states that it would be permissible under the final rules for a company to use the auditor of its financial statements to perform the GHG emissions attestation engagement, assuming the final rules' requirements for assurance providers are met. While audit committee preapproval of the attestation provider is not required by the final rules, the adopting release indicates that "audit committees should consider what level of involvement would be appropriate for them to take with respect to the selection and retention of attestation providers for climate-related disclosures."

The final rules also require a company that (i) is required to provide Scope 1 and/or Scope 2 emissions disclosure that obtains voluntary assurance over its GHG emissions disclosure prior to the first required fiscal year for assurance, or (ii) is not required to include a GHG emissions attestation report pursuant to the final rules, but that chooses to subject its GHG emissions disclosure to third party assurance, to disclose certain information set forth in Item 1506(e).

D. Risk Management and Mitigation and Transition Planning

Under the final rules, companies will be required to describe any processes they have for identifying, assessing, and managing material climate-related risks (Item 1503). Under new Item 1503(a), a company is also expected to address, as applicable, how it (i) identifies whether it has incurred or is reasonably likely to incur a material physical or transition risk; (ii) decides whether to mitigate, accept, or adapt to a particular risk; and (iii) prioritizes whether to address a particular risk. If a company is managing a material climate-related risk, it also will be expected to disclose whether and how any of the processes it has described for identifying, assessing, and managing the material climate-related risk have been integrated into the company's overall risk management system or process (Item 1503(b)).

Under new Item 1502(e), companies will be required to describe a transition plan if one has been adopted to manage a material transition risk, and must include quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the transition plan. “Transition plan” is defined to mean a company’s strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations. Annual updates regarding any such transition plan are also required. In addition, under new Item 1502(c), companies will be required to discuss how any such transition plan relates to the company’s business model or strategy. The final rules do not mandate the adoption of a transition plan, and transition plan disclosure will be subject to a safe harbor under 1507, as discussed in more detail below.

E. Climate-Related Targets and Goals

The final rules (Item 1504(a)) will require a company to disclose any climate-related targets or goals, including internal (and previously undisclosed) targets and goals, if any such target or goal has materially affected or is reasonably likely to materially affect the company’s business, results of operations, or financial condition. A discussion of any such material impacts to the company’s business, results of operations, or financial condition as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal is also required under Item 1504(c)(1). In addition, under Item 1504(c)(2), this disclosure must include quantitative and qualitative disclosures of any material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal.

Under Item 1504(b), any company required to make disclosures under 1504(a) will also be required to provide any additional information or explanation necessary to an understanding of the material impact or reasonably likely material impact of the target or goal, with a non-exclusive list of disclosure items set forth in the rules,⁷ which includes qualitative disclosure regarding how the company intends to meet its climate-related targets or goals. Moreover, companies will be required to disclose any progress toward meeting the target or goal and how such progress has been achieved under Item 1504(c), and such disclosure will be required to be updated annually. Item 1502(c) also will require a company to describe how any of the targets identified in response to Item 1504 relate to the company’s business model or strategy.

The final rules include a disclosure requirement regarding a company’s use of carbon offsets or renewable energy credits (RECs) under Item 1504(d). However, unlike the proposed rules, this disclosure is only required if the carbon offsets or RECs have been used as a material component of a company’s plan to achieve climate-related targets or goals. If carbon offsets or RECs have been used as a material component of a company’s plan to achieve climate-related targets or goals, then the company will be required to disclose (i) the amount of carbon avoidance, reduction, or removal represented by the offsets or the amount of general renewable energy represented by the RECs; (ii) the nature and source of the offsets or RECs; (iii) a description and location of the underlying projects; (iv) any registries or other authentication of the offsets or RECs; and (v) the cost of the offsets or RECs. We note that certain of these disclosures may have overlap with requirements under California’s AB 1305.

F. Scenario Analysis and Internal Carbon Prices

Under new Item 1502(f), if a company uses scenario analysis to assess the impact of climate-related risks on its business, results of operations, or financial condition, and if, based on the results of scenario analysis, a company determines that a climate-related risk is reasonably likely to have a material impact on its business, results of operations, or financial condition, then the company will be required to describe each such scenario, including a brief description of the parameters, assumptions, and analytical choices used, as well as the expected material impacts, including financial impacts, on the company under each

such scenario. The scenario analysis disclosure will be subject to a safe harbor under 1507, as discussed in more detail below.

New Item 1502(g) will require a company that uses internal carbon pricing to disclose certain information about the internal carbon price, if such use is material to how the company evaluates and manages a climate-related risk identified under Item 1502(a) as having a material impact or being reasonably likely to have a material impact on the company, including on its business strategy, results of operations, or financial condition. If a company's use of internal carbon pricing is material, the final rules will require the company to disclose in units of its reporting currency: (i) the price per metric ton of CO₂e; and (ii) the total price, including how the total price is estimated to change over the short and long term. If a company uses more than one internal carbon price to evaluate and manage a material climate-related risk, it must provide the relevant disclosures for each such carbon price and disclose its reasons for using different prices. Finally, if the scope of entities and operations involved in the use of a described internal carbon price is materially different than the organizational boundaries used for the purposes of calculating a company's GHG emissions under the final rules, the company must briefly describe the difference. The carbon price disclosure will be subject to a safe harbor under Item 1507, as discussed in more detail below.

G. Financial Disclosures

Introduction

Under new Article 14 of Regulation S-X, companies will generally be required to include certain disclosures in a note to the financial statements included in any such filing in which disclosure pursuant to Item 1500 is required. The disclosures to be included in the note to the financial statements, which generally relate to severe weather events and other natural conditions, include, in summary: (i) certain contextual information (Rule 14-02(a)); (ii) expenditures expensed as incurred and losses resulting from severe weather events and other natural conditions (Rule 14-02(c)); (iii) capitalized costs and charges resulting from severe weather events and other natural conditions (Rule 14-02(d)); (iv) certain information regarding carbon offsets and RECs (Rule 14-02(e)); (v) certain disclosures regarding recoveries (Rule 14-02(f)); and (vi) financial estimates and assumptions materially impacted by severe weather events and other natural conditions or disclosed targets or transition plans (Rule 14-02(h)).

Importantly, the new financial disclosure requirements will apply to all registrants captured by the scope of the rules, regardless of whether they prepare their financial statements under US General Accepted Accounting Principles (GAAP) or, as permitted for foreign private issuers, under the International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB) or another GAAP with a US GAAP reconciliation.

The SEC's Regulation S-X has always applied to financial statements prepared under non-US accounting principles and so in some respects requiring IFRS filers to comply with the new standards under Article 14 is not surprising. For example, the SEC's auditor independence rules under Rule 2-01 of Regulation S-X have long applied to foreign private issuers. However, since 2007, when the SEC fully accepted IFRS without a reconciliation to US GAAP, the SEC generally has not required specific accounting treatment or disclosures from foreign private issuers that use IFRS.⁸ As a result, requiring IFRS filers to supplement their financial statements with the information under Article 14 feels somewhat inconsistent with the SEC's historic embrace of IFRS.

Expenditures, losses, capitalized costs and charges

Under new Rules 14-02(c) and (d), companies will be required to disclose: (i) the aggregate amount of expenditures expensed as incurred and losses, excluding recoveries, incurred during the fiscal year as a result of severe weather events and other natural conditions; and (ii) the aggregate amount of capitalized costs and charges, excluding recoveries, recognized during the fiscal year as a result of severe weather events and other natural conditions. Under the final rules (Rule 14-02(b)), while the 1% disclosure threshold remains with respect to these disclosure requirements, the final rules modify the denominators used for the threshold and adopting de minimis thresholds that exempt disclosure of amounts that aggregate to less than \$100,000 in the income statement (item (i) above under Rule 14-02(c)) or less than \$500,000 in the balance sheet (item (ii) above under Rule 14-02(d)).

In order to determine whether a capital cost, expenditure expensed, charge, or loss is “as a result of” a severe weather event or other natural condition, the Commission has adopted an attribution principle. The attribution principle, under new Rule 14-02(g), requires a company to attribute a cost, expenditure, charge, loss, or recovery to a severe weather event or other natural condition and disclose the entire amount of the expenditure or recovery when the event or condition is a significant contributing factor in incurring the cost, expenditure, charge, loss, or recovery.

Carbon offsets and RECs

If carbon offsets or RECs have been used as a material component of a company’s plans to achieve its disclosed climate-related targets or goals, companies are required to disclose the aggregate amount of carbon offsets and RECs expensed, the aggregate amount of capitalized carbon offsets and RECs recognized, and the aggregate amount of losses incurred on the capitalized carbon offsets and RECs, during the fiscal year under new Rule 14-02(e). In addition, companies must separately disclose the beginning and ending balances of capitalized carbon offsets and RECs on the balance sheet for the fiscal year, and where on the income statement or balance sheet the capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs are presented.

Recoveries

Companies must also separately disclose any recoveries resulting from severe weather events and other natural conditions to reflect the net effect on the company’s financial statements, and where on the income statement and balance sheet, as applicable, the capitalized costs, expenditures expensed, charges, and losses are presented (Rule 14-02(f)).

Contextual information

Under the final rules, companies are required to include certain contextual information that relates to the substantive requirements, including: (i) descriptions of significant inputs and assumptions used, significant judgments made, and other information that is important to understanding the financial statement effect and, if applicable, policy decisions made by the company (Rule 14-02(a)); and (ii) whether estimates and assumptions the company used to produce the consolidated financial statements were materially impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions or any climate-related targets or transition plans disclosed by the company, including a qualitative description of how the development of such estimates and assumptions were impacted by such events, conditions, targets, or transition plans.

Additional considerations

While the financial impact metrics included in the proposed rules that would have required disclosure of the impacts of severe weather events and other natural conditions and any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks on the line items in a company’s financial

statements are not included in the final rules, in the adopting release, the Commission notes that companies currently have an obligation under GAAP to consider material impacts on their financial statements, and the fact that the impacts may have been driven by climate-related matters does not alter this obligation. Therefore, the adopting release notes that a company “should consider whether it currently has an obligation to disclose information that would have been covered by the proposed Financial Impact Metrics.” The Commission also notes in the adopting release that, while the requirements regarding disclosure of expenditures related to transition activities have been adopted outside the financial statements (specifically, in Regulation S-K), companies are reminded that “current accounting standards may require the disclosure of material expenditures within the financial statements, which may include material expenditures incurred in furtherance of a registrant’s transition activities, depending upon the application of these current accounting standards.”

H. Safe Harbor and Liability Considerations

The climate-related disclosures provided pursuant to the final rules will be treated as filed. Climate-related disclosures will therefore be subject to potential liability pursuant to Exchange Act section 18 and, if included or otherwise incorporated by reference into a Securities Act registration statement, Securities Act section 11 as well.

As briefly discussed above, the final rules include new Item 1507, which provides that disclosures other than historic facts provided pursuant to the following subpart 1500 provisions constitute “forward-looking statements” for the purposes of the Private Securities Litigation Reform Act (PSLRA) safe harbors: Item 1502(e), transition plans; Item 1502(f), scenario analysis; Item 1502(g), internal carbon pricing; and Item 1504, targets and goals. In addition, the final rules provide that the PSLRA safe harbor will apply to these forward-looking statements in connection with certain transactions and disclosures by certain issuers notwithstanding that these transactions and issuers are excluded from the PSLRA safe harbors in subparagraphs (a) and (b) of section 27A of the Securities Act and section 21E of the Exchange Act.

Because the disclosure items pertaining to transition plans, scenario analysis, internal carbon pricing, and targets and goals are likely to involve a complex mixture of estimates and assumptions, some of which may be based on a combination of facts and projections, the safe harbor adopted in the final rules provides that all information required by these Item 1500 provisions concerning transition plans, scenario analysis, internal carbon pricing, and targets and goals is considered forward-looking statements for purposes of the statutory PSLRA safe harbors, except for historical facts. Notwithstanding deeming certain disclosures to be “forward-looking statements” and expanding the PSLRA protections to include certain issuers and transactions under Item 1507, the rest of the PSLRA requirements apply to the Item 1507 safe harbor. For example, in order for the safe harbor protections to apply, a forward-looking statement must be accompanied by a meaningful cautionary statement that identifies important factors that could cause actual results to differ materially from those in the forward-looking statement.

The Commission also amended Rule 436 of the Securities Act to provide that a report by an attestation provider covering Scope 1 and/or Scope 2 emissions at a limited assurance level will not be considered a part of the related registration statement or certified by an expert within the meaning of sections 7 and 11 of the Securities Act. This additional protection is limited to the context of limited assurance, and does not extend to the provision of reasonable assurance.

I. Timing

The final rules provide for delayed and staggered compliance dates that vary according to a company’s filing status.

Compliance Dates and Details Under the Final Rules¹

Registrant Type ²	Disclosure and Financial Statement Effects Audit		GHG Emissions/Assurance			Electronic Tagging
	All Reg. S-K and S-X disclosures, other than as noted in this table	<ul style="list-style-type: none"> Item 1502(d)(2) (climate mitigation/adaptation expenditures); Item 1502(e)(2) (transition plan expenditures); and Item 1504(c)(2) (expenditures or impacts associated with climate targets or goals) 	Item 1505 (Scope 1 and Scope 2 GHG emissions)	Item 1506 Limited Assurance	Item 1506 Reasonable Assurance	Item 1508 — Inline XBRL tagging for subpart 1500 ³
LAFs	FYB 2025 data	FYB 2026 data	FYB 2026 data	FYB 2029 data	FYB 2033 data	FYB 2026 (for applicable report)
AFs (other than SRCs and EGCs)	FYB 2026 data	FYB 2027 data	FYB 2028 data	FYB 2031 data	N/A	FYB 2026 (for applicable report)
SRCs, EGCs, and NAFs	FYB 2027 data	FYB 2028 data	N/A	N/A	N/A	FYB 2027 (for applicable report)

- As used in this chart, "FYB" refers to any fiscal year beginning in the calendar year listed. Reporting is generally required in the following year.
- Large accelerated filers (LAFs); accelerated filers (AFs); smaller reporting companies (SRCs); emerging growth companies (EGCs); non-accelerated filers (NAFs).
- Financial statement disclosures under Article 14 will be required to be tagged in accordance with existing rules pertaining to the tagging of financial statements. See Rule 405(b)(1)(i) of Regulation S-T.

By way of an example provided in the adopting release, an LAF with a January 1 fiscal-year start and a December 31 fiscal-year-end date will not be required to comply with the climate disclosure rules (other than those pertaining to GHG emissions and those related to Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2), if applicable) until its Form 10-K for fiscal year ended December 31, 2025, due in March 2026. If required to disclose its Scope 1 and/or Scope 2 emissions, such a filer will not be required to disclose those emissions until its Form 10-K for fiscal year ended December 31, 2026, due in March 2027, or in a registration statement that is required to include financial information for fiscal year 2026. Such emissions disclosures would not be subject to the requirement to obtain limited assurance until its Form 10-K for fiscal year ended December 31, 2029, due in March 2030, or in a registration statement that is required to include financial information for fiscal year 2029. The company would be required to obtain reasonable assurance over such emissions disclosure beginning with its Form 10-K for fiscal year ended December 31, 2033, due in March 2034, or in a registration statement that is required to include financial information for fiscal year 2033.

Changes From the Proposed Rules

In addition to the limitation of GHG emissions reporting to Scope 1 and Scope 2, and removing required Scope 3 reporting (except arguably in the context where a company is describing its targets, goals, and/or transition risks or plans), the final rules do make a number of changes from the proposed rules, some of which are more significant than others. A few key changes to be aware of include:

- *Certain elements of the proposed board oversight requirements*, including whether any board member has expertise in climate-related risks and the nature of the expertise.
- *Additional disclosures regarding climate-related risks*, including how the company determines the relative significance of climate-related risks compared to other risks and how the company determines materiality of climate-related risks. However, we know this Commission has been commenting on companies' climate-related disclosures asking for detailed responses on materiality considerations.
- *The financial impact metrics*, which would have required a company to disclose the financial impacts from severe weather events and other natural conditions and transition activities on any relevant line item in the registrant's consolidated financial statements during the fiscal years presented, were removed from the final rules. However, the Commission states in the adopting release that existing accounting standards might require this in certain instances.
- *Transition activities have been moved out of the financial statements*. The Commission did not adopt the broader requirement for disclosure of transition activities in financial statements; however, disclosures regarding carbon offsets and RECs are included in the financial statements, and transition planning is included in narrative disclosure requirements.
- *Disclosure regarding opportunities*. The proposed rules would have required a number of disclosures regarding climate-related opportunities, which the final rules make voluntary.
- *SRCs and EGCs have some relief*. The final rules do not require GHG emissions disclosures from SRCs, EGCs, or NAFs.
- *Interim targets and goals are not required*. The proposed rules would have required disclosure about whether and how the board sets climate-related targets or goals, including interim targets or goals, which has been removed from the final rules.

- *Quantifiable goals toward progress.* The proposed rules would have required disclosure of metrics quantifying a company's progress toward its target or goal, and the final rules do not; however, the final rules do require quantitative and qualitative disclosures of material expenditures and material impacts on financial estimates and assumptions related to targets and goals.
- *The inclusion of materiality qualifiers and non-exclusive lists.* The final rules include a number of materiality qualifiers, most notably in connection with the items below, as well as a number of non-exclusive lists.

Key Materiality Qualifiers	Key Non-Exclusive Lists
Climate impacts under Item 1502(b)	Management's role in assessing and managing climate-related risks
Scenario analysis under Item 1502(f)	Climate-related risks
Internal carbon pricing data under Item 1502(g)	Material impacts
Processes under Item 1503	Targets and goals
Offsets and RECs under Item 1504	
GHG emissions under Item 1505	
Financial estimates and assumptions under Rule 14-02(h)	

Global Reporting Impacts

The SEC's final climate rules are occurring in the context of rapidly evolving global developments regarding climate-related disclosures. For many companies, navigating the disclosure requirements in more than one jurisdiction is likely to be a complex reality in 2025 and beyond. On the next page, we provide high-level summaries regarding the key similarities and differences between the SEC's final climate rules and three other climate- or broader sustainability-related disclosure regimes: (i) the EU's Corporate Sustainability Reporting Directive (CSRD); (ii) the International Sustainability Standards Board (ISSB) standards, which are likely to be adopted in multiple jurisdictions around the world in the coming years; and (iii) the recent adoption of a suite of climate-related legislation by the state of California.

Key Considerations	CSRD	SEC
Scope	Covers the entire spectrum of sustainability topics: Climate change, pollution, water and marine resources, biodiversity and ecosystems, resource use and circular economy, own workforce, value chain work workers, affected communities, consumer and end-users and business conduct	Covers primarily climate-related matters and governance with respect to those matters
Intra-jurisdictional considerations	Can include “gold plating” in EU jurisdictions. May ultimately require reporting on behalf on global corporate groups	May exist in addition to independent state-level requirements
Materiality	Materiality definition includes “impact materiality” in addition to financial materiality (known as double materiality)	Materiality definition is limited to financial materiality
Scope 3 required?	Yes (if climate is a material topic, with companies required to explain in detail if it is not considered material)	No
Value chain	Articulated value chain reporting requirements	Indirect value chain considerations
Assurance	Limited assurance over a broad range of disclosures, potentially rising to reasonable assurance over time	Limited and then reasonable assurance for certain companies
Implementation timing	Phased in over time, but for the first phase data requirements to begin in 2024; reporting to begin in 2025	Data requirements to begin in 2025; reporting to begin in 2026

Key Considerations	ISSB	SEC
Scope	Will cover the entire spectrum of sustainability topics. Current standards cover general sustainability and climate	Covers primarily climate-related matters and governance with respect to those matters
Intra-jurisdictional considerations	Can include “gold plating” or other changes by jurisdiction	May exist in addition to independent state-level requirements
Materiality	Standards claim to use “financial materiality”	Materiality definition is limited to financial materiality
Scope 3 required?	Yes	No
Value chain	Yes	Indirect value chain considerations
Assurance	Not currently (although will depend on jurisdictional adoption)	Limited and then reasonable assurance for certain companies
Implementation timing	Depends on jurisdictional adoption	Data requirements to begin in 2025; reporting to begin in 2026

Key Considerations	California	SEC
Scope	Covers primarily climate-related matters, including GHG emission reporting and TCFD reporting, as well as detailed offsets disclosure in certain instances	Covers primarily climate-related matters and governance with respect to those matters
Intra-jurisdictional considerations	May exist in addition to other state requirements and the SEC rules	May exist in addition to independent state-level requirements
Materiality	Not directly addressed	Materiality definition is limited to financial materiality
Scope 3 required?	Yes	No
Value chain	Through Scope 3 (and potentially through indirect risks), yes	Indirect value chain considerations
Assurance	Limited and then reasonable assurance for certain companies	Limited and then reasonable assurance for certain companies
Implementation timing	Reporting to begin as early as 2026	Data requirements to begin in 2025; reporting to begin in 2026

FAQs and Practicalities for Compliance

Below are some of the most frequently asked questions we have received to date on the rules, together with our responses. We recommend reaching out to legal counsel to address the specifics of any particular situation.

Question: *I am a large accelerated filer and plan to issue debt or equity securities this year and/or in 2025. While the disclosures required by the rules are not required until our annual report filed in 2026, do our registration statements filed on Form S-3 before the first 10-K requiring these disclosures need to include the climate disclosures?*

Answer: No, the final rules do not require the S-3 itself to include climate information that would otherwise be covered in a subsequent 10-K filing. Therefore, a registration statement filed in 2025 would not trigger an early phase-in through an S-3.

Question: *I am contemplating an initial public offering on Form S-1 this year and/or in 2025. Does the S-1 need to include the disclosures required by the final rules?*

Answer: No, the final rules do not require the S-1 filed in 2024 or 2025 to include the climate disclosures set forth in the final rules. The rules dictate disclosures by filer status, and earliest compliance dates kick in for Large Accelerated Filers for 2025 data (filed in 2026), so S-1s filed before 2026 will not require the climate-related disclosures pursuant to the final rules. If after the IPO is completed the company is an EGC, for instance, the company would then need to comply with the scaled down disclosure requirements contained in the final rules for EGCs. See page 12 of this Alert for details on compliance dates based on filer status.

Question: *The proposed rules would have required us to disclose a board climate expert. The final rules have dropped this requirement. Who on the board should oversee our ESG reporting and compliance with the SEC's final rules and other mandatory climate disclosure requirements? Should the audit committee have a role in this?*

Answer: The answer will likely depend on the company. Facts to be considered include what exchange the company's securities are listed on, what industry it is in (e.g., is it required to have a risk committee?), other mandatory or soon-to-be mandatory disclosure requirements it is subject to (e.g., California, CSRD, ISSB), and the company's existing disclosures and commitments to understand how broad its compliance burden is. Companies may also want to consider the existing responsibilities of any particular board body. While audit committees are generally tasked with oversight of risk management and certain legal compliance matters, many companies have housed oversight of ESG and/or climate matters with the governance committee or even created a stand-alone ESG committee. Therefore, the right answer will likely be company-specific, and potentially specific to a company's current strategy and sustainability compliance burden.

Question: *How should I think about what we disclose in our future voluntary climate reports (e.g., TCFD, SASB, GRI, or other ESG/Sustainability/CSR reports) in light of the rules' requirements? Would I be expected to include or incorporate my entire TCFD report into my 10-K?*

Answer: We would suggest increasing the governance underpinning voluntary reports and implementing legal review of them to assess what may be financially material under US securities law, as well as whether any voluntary disclosures may trigger additional disclosure requirements under the final rules or other regulatory regimes, or otherwise create or enhance reporting-related risks. Many voluntary reports are intended for audiences beyond investors (e.g., suppliers, employees, or customers), so creating a roadmap of what is interesting to the company's various stakeholders versus what is financially material can be helpful in the long run for responding to any questions that may arise regarding why certain information appears in a voluntary report but not in the company's SEC filings.

The SEC's final climate rules introduce a new level of legal complexity that extends beyond the US and beyond required disclosures. Below is a top 10 list of considerations and practicalities for companies assessing what these rules mean for their short- and long-term climate-related disclosures and compliance considerations.

1. Understand who you need internally and externally (including an attestation provider) and get your team in order.
2. Consider the additional complexity for materiality assessments and regulatory mapping.
3. Assess existing disclosures for potential triggers and vulnerabilities (i.e., already disclosed risks and impacts). Understand that voluntary TCFD and GHG Protocol are very different from the SEC's regulatory approach, and build in time to assess existing disclosures under these standards.
4. Be prepared for the need for more consistent and nuanced risk assessments, beyond what has been conducted for voluntary reporting, including how climate-related risk assessments fit into the company's overall risk assessment and management processes.
5. Understand that your processes, internal controls, and materiality assessments may be subject to greater regulatory scrutiny. Given this, work to build internal consistency with respect to financial materiality (quantitatively and qualitatively) and systems to support that consistency.
6. Evaluate competency and accountability considerations of potential attestation providers.

7. For entities subject to both SEC rules and CSRD (and other disclosure requirements), there will be a need to consider how information is presented. In particular, information that is considered material for CSRD purposes (because of double materiality) may not be required to be disclosed under the SEC rules, but may still be subject to scrutiny. This difference in reporting approach may need to be explained to stakeholders.
8. Understand that the final rules may not ultimately be enforced in their current form, and prioritize compliance areas that are (i) likely to survive the current litigation; (ii) the subject of other regulatory regimes to which your company is subject; or (iii) core areas of focus for your investors.
9. Keep an eye on the litigation developments and understand that while the winds of political trends may change in the US, the direction of travel globally will likely remain the same.
10. Be prepared for additional developments at the state level and internationally this year.

Conclusion

The SEC's adoption of final climate change disclosure rules will likely result in the continued integration of climate considerations into the financial reporting. From the largest global companies to small emerging businesses, these rules are just the latest indication that we are likely to continue to see climate-related considerations work their way into capital allocation as well as the social costs of doing business. This development also adds to the global regulatory landscape, as companies operating in more than one jurisdiction navigate a climate and sustainability-reporting tapestry that is likely to continue to grow in complexity. Given this, the need for advisors who can address cross-jurisdictional regulatory differences is likely to continue to increase in the foreseeable future.

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[ESG Insights: 10 Things That Should Be Top of Mind in 2024](#)

[SEC Proposes Extensive Climate Change Disclosure Regulations](#)

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Endnotes

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- ¹ See, Statement on Final Rules Regarding Mandatory Climate Risk Disclosures, Chair Gary Gensler (Mar. 6, 2024), available here. See also, *Basic Inc. v. Levinson*, 485 U.S. 224, 231, 232, and 240 (1988) (holding that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision; and quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U. S. 438, 449 (1977) to further explain that an omitted fact is material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.")
- ² Non-exclusive list includes: (i) whether and which management positions or committees are responsible for assessing and managing climate-related risks and the relevant expertise of such position holders or committee members in such detail as necessary to fully describe the nature of the expertise; (ii) the processes by which such positions or committees assess and manage climate-related risks; and (iii) whether such positions or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.
- ³ Transition risks include such non-exclusive examples as (i) increased costs attributable to changes in law or policy; (ii) reduced market demand for carbon-intensive products leading to decreased prices or profits for such products; (iii) the devaluation or abandonment of assets; (iv) risk of legal liability and litigation defense costs; (v) competitive pressures associated with the adoption of new technologies; (vi) and reputational impacts (including those stemming from a registrant's customers or business counterparties) that might trigger changes to market behavior, consumer preferences or behavior, and registrant behavior.
- ⁴ If a physical risk, the final rules require disclosure regarding whether it may be categorized as an acute or chronic risk, and the geographic location and nature of the properties, processes, or operations subject to the physical risk. The final rules do not require more details regarding the geographical location of physical climate-related risks, as the proposed rules would have. If a transition risk, the final rules require disclosure regarding whether it relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), or other transition-related factors, and how those factors impact the company.
- ⁵ Non-exclusive list includes: (i) business operations, including the types and locations of its operations; (ii) products or services; (iii) suppliers, purchasers, or counterparties to material contracts, to the extent known or reasonably available; (iv) activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes; and (v) expenditure for research and development.
- ⁶ Note that Item 1505 will be deemed to satisfy the "suitable criteria" requirements of the prevailing attestation standards.
- ⁷ Non-exclusive list: (i) the scope of activities included in the target; (ii) the unit of measurement; (iii) the defined time horizon by which the target is intended to be achieved, and whether the time horizon is based on one or more goals established by a climate-related treaty, law, regulation, policy, or organization; (iv) if the company has established a baseline for the target or goal, the defined baseline time period and the means by which progress will be tracked; and (v) a qualitative description of how the company intends to meet its climate-related targets or goals.
- ⁸ Exceptions are when Regulation S-X requires financial information with respect to entities other than the registrant itself, such as under Regulation S-X Rule 3-05 relating to acquired entities, Rule 3-09 relating to affiliates, and Rules 3-10 and 13-01 relating to guarantors.