Blogs
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Public Chatter

SEC Proposes Climate Disclosure Rules: 9 Things to Know

Yesterday, as noted in this **press release**, the SEC proposed climate disclosure rules. Here's the **hefty 490-page proposing release** - and here's the **fact sheet**. The SEC's summary of the proposed rules can be found on pages 40-46 of the proposing release - that is the "must read" section of the tome. Given the magnitude of this proposal - **this NPR piece** calls it "historic" - we will be covering discrete aspects of this proposal over the coming weeks. In the meantime, here are 9 things to know at a glance: **1. When Will Final Rules Be Adopted?** - Even though comments are due 30 days after the proposal in published in the Federal Register or by May 20th (whichever is later), the SEC may not adopt final rules in 2022 given the magnitude of the proposal and based on how long it took to even get this proposal out. The SEC is being careful with this rulemaking given the grumblings about an inevitable lawsuit challenging its validity. Remember that the SEC normally will consider comments that are submitted beyond the deadline.

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2. When Would Final Rules Be Phased In? - Even if final rules were adopted in 2022, there would be a phase-in period for all sizes of companies, with the compliance date dependent on a company's filer status - and an additional phase-in period for Scope 3 greenhouse gas (GHG) emissions disclosure. For the details of the phase-in periods, see the table on page 3 of the **fact sheet.**

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3. What Are the New Disclosure Requirements? - The proposed rules would create a new subpart of Regulation S-K covering several topics, including: - Various aspects of climate-related risks, such as board and management oversight, material impacts of these risks on the company over the short-, medium- and long-term, and effects on company strategy - The company's Scope 1 and Scope 2 GHG emissions, separately disclosed, expressed both by disaggregated constituent greenhouse gases and in the aggregate, and in absolute terms, not including offsets, and in terms of intensity (per unit of economic value or production) - Description of scenario analysis used to assess the company's resilience to climate-related risks, if the company uses scenario analysis - If the company has adopted a transition plan as part of its climate-related risk management strategy, a description of the plan, including the relevant metrics and targets used to identify and manage any physical and transition risks

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4. What About Financial Statement Disclosures? - In addition to the Regulation S-K disclosures, the proposed rules would also add a new article to Regulation S-X, governing the requirements for a company's financial statements. The new article would require disclosure of: - Impact of climate-related events (severe weather events and other natural conditions) and transition activities on the line items of a company's financial statements - Expenditures made to mitigate risks of climate-related events and those related to transition activities - Impact of climate-related events on estimates and assumptions used to produce the company's financial statements

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5. What Must a Company Disclose If It Has Publicly Set Climate Goals? - These four things: - The scope of activities and emissions included in the target, the defined time horizon by which the target is intended to be achieved, and any interim targets - How the company intends to meet its climate-related targets or goals - Relevant data to indicate whether the company is making progress toward meeting the target or goal and how such progress has been achieved, with updates each fiscal year - If carbon offsets or renewable energy certificates ("RECs") have been used as part of the plan to achieve climate-related targets or goals, certain information about the carbon offsets or RECs, including the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECs

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6. What Types of Scope 3 GHG Emissions Would Be Required to Be Disclosed? - In addition to Scope 1 and

2 GHG emissions disclosures, companies would be required to make Scope 3 disclosures - if material - or if the company has set a GHG emissions target or goal that includes Scope 3 GHG emissions. There would be a safe harbor for liability from Scope 3 GHG emissions disclosure and an exemption from the Scope 3 GHG emissions disclosure requirement for smaller reporting companies.

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7. In Which SEC Filings Would These Disclosures Be Provided? - Regulation S-K mandated disclosures would be made in registration statements and Form 10-Ks, in a separate, appropriately captioned section. Mandated Regulation S-X disclosures would be in a note to the financials. Both narrative and quantitative disclosures would need to tagged with Inline XBRL.

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8. Which Companies Would Be Required to Obtain Attestations Reports? - Accelerated filers and large accelerated filers would be required to include an attestation report from an independent attestation service provider covering Scope 1 and 2 GHG emissions disclosures, with a phase-in over time. For all companies, the new disclosures in the notes to financial statements would, of course, be subject to audit - and be within the scope of the company's internal controls over financial reporting requirements.

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9. How Long Does It Take to Read a 490-Page Proposing Release? - Longer than it takes to get to the center of a tootsie pop…

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