Blogs
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Let's examine how the SEC's new climate rules will impact the drafting of IPO prospectuses. Here are six things to know:

1. **Compliance timing** - Most of the requirements in the final climate rules apply to IPOs beginning with those that will require financial statements for a fiscal year beginning in 2027. (Adopting Release discussion starting on page 588)

2. **Smaller companies get the benefit of "no GHG emissions disclosure" in IPOs** - The good news is that the SEC's final climate rules aren't as onerous for smaller reporting companies and emerging growth companies compared to larger companies because they are freed from Scope 1 and 2 emissions reporting,

even after all of the rules phase in. On page 572-573 of the Adopting Release, the SEC notes that 90% of IPOs since the enactment of the JOBS Act have been EGCs.

3. **Larger companies going public don't get much relief -** The bad news is that larger companies that go public don't get much in the way of climate disclosure relief. Although GHG emissions disclosure should not be required in an IPO registration statement, these companies are likely to qualify as large accelerated filers or accelerated filers relatively soon after the IPO – once they have been public for at least 12 months and filed their first annual reports – at which point Scope 1 and 2 disclosures will be required per the phase-in periods applicable to those categories of filers.

   Commissioner Peirce honed in on this point in her dissent, noting the additional costs could lead to fewer companies going public. (Commissioner Peirce's statement at footnote 26)

4. **Climate disclosures in IPO prospectuses will have Section 11 liability but also have PSLRA safe harbor protection for certain forward-looking disclosures** – As the climate disclosures elicited by the new rules are treated as "filed," they are subject to the liability provisions under Section 11 of the Securities Act of 1933. (Adopting Release discussion starting on page 584)

   Under Item 1507 of Regulation S-K, there is PSLRA safe harbor protection for disclosures regarding transition plans, scenario analysis and targets and goals (other than historical facts), which are deemed to be "forward-looking" under the new rules. Although other forward-looking disclosures in the IPO context are not protected by the safe harbor, these climate-related disclosures will get the benefit of the safe harbor in the IPO context, as the SEC exercised authority granted to it in the PSLRA to provide exemptions from liability under that Act. (Adopting Release discussion starting on page 398)

5. **Financial statement disclosures only required for the most recently completed fiscal year for audited financials included in the IPO registration statement -** Under Rule 14-01(d) of Regulation S-X, disclosure must be provided for the company's most recently completed fiscal year, and to the extent previously disclosed or required to be disclosed, for the historical fiscal year(s), for which audited consolidated financial statements are included in the filing.

   In other words, as noted on page 532 of the Adopting Release, a company engaged in an IPO with financial statements that include a fiscal year that is subject to the final rules is required to provide financial statement footnote disclosure in accordance with Rule 14-02 for the most recently completed fiscal year for which audited financial statements are included in the filing. However, such company will not be required to provide disclosure for any preceding fiscal years included in the initial registration statement because as new entrants to the public markets such companies would not have previously disclosed or been required to disclose the information required by the final rules.

6. **All other provisions in the SEC's new rules apply to IPOs as they would '34 Act disclosures –** At the end of the day, the only accommodations for IPOs are the ones noted above. All the other new climate disclosure requirements apply equally to IPOs as they do for '34 Act disclosures.

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