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In Depth: What Can Public Companies Do Now to Prepare for the SEC's New Proposed Rules on Climate-Related Disclosures?



By **Jason M. Halper**
Partner | Global Litigation



By **Erica Hogan**
Partner | Corporate



By **Michael J. Ruder**
Special Counsel | Capital Markets



By **Lauren Russo**
Law Clerk | Corporate

On March 21, 2022, the U.S. Securities and Exchange Commission (the “SEC”) [proposed](#) far-reaching amendments to Regulation S-K and Regulation S-X that would mandate significant additional climate-related disclosures for public companies. A summary of the new disclosure requirements is available in our [Clients & Friends Memo dated March 23, 2022](#). In brief, the proposed rules would require a public company to make significant additional disclosures regarding, among other things, its board and management’s oversight of climate-related risks; its processes for identifying, assessing and managing climate-related risks; and its climate-related targets and goals. In addition, a company would be required to disclose how climate-related risks have had or are likely to have an impact on its business and consolidated financial statements, as well as on its strategy, business model and outlook. A company also would be required to disclose its greenhouse gas emissions and provide an attestation report to provide reasonable assurance, after a phase-in period, covering certain disclosed emissions.

Although the SEC’s proposal made clear that asset-backed securities issuers are not covered by the proposed rules, the SEC indicated that it is continuing to consider whether and how to apply this type of regulation to asset-backed securities issuers.

If adopted as proposed, the amendments would impose significant reporting requirements on registrants, which in turn would increase compliance costs and

require additional managerial time and attention. Although the proposed rules contain various phase-in periods dependent upon filer status, there are steps, discussed below, that public companies can act on today to prepare for the new rules.

1) Review Existing Public Disclosures

Although not yet required to do so by a specific climate-related rule (existing securities law disclosure requirements dependent on general determinations of materiality always have applied), many companies already make a variety of climate-related disclosures to meet investor and legal demands. Some metrics that are currently being reported on a voluntary basis might need to be revised going forward in order to satisfy the technical requirements of the SEC's proposed rule. For example, even if not mandated under a traditional materiality analysis, companies may already be releasing information about their greenhouse gas emissions and other metrics in their voluntary ESG or corporate sustainability reports. To prepare for the new proposed SEC rule, companies should evaluate their existing disclosures, and the internal processes, procedures and quantitative methodologies underlying such disclosures (*i.e.*, a climate audit), to determine how to bring them into alignment with the SEC's proposed requirements. Particular attention should be paid to identifying which areas will require the most time to develop new internal processes and procedures to comply with the proposed SEC rule.

2) Review and/or Implement Policies and Procedures Related to the Board's Oversight of Climate-Related Risks

The proposed rule will require a company to disclose information about the board and management's oversight and governance of climate-related risks, which include physical risks (*i.e.*, risks to company assets as a result of acute climate events or chronic climate change) and transition risks (*i.e.*, risks and opportunities associated with the transition to a low-carbon economy). Accordingly, a company should evaluate the board and management's roles, and the processes in place, for assessing, managing and overseeing climate-related risks. Companies could also consider whether any changes to the board, the committees and their charters, or management roles are appropriate to ensure those with proper expertise on climate-related matters are in leadership positions.

3) Engage Climate Change Experts – Both Internal and External

Given the breadth of the proposed rule, companies should consider whether their personnel that will be addressing climate-related risks and opportunities possess the relevant knowledge, skills and resources. Companies may consider implementing training or professional development programs for those new to such undertakings to ensure the companies are considering the full range of risks – both physical and transition risks – as required by the proposed rule. A company could also consider engaging outside consultants or counsel to help evaluate the company's climate-related risks and advise the company on complying with the SEC's proposed new requirements.

4) Measure Scope 3/Supply Chain Emissions

The proposed rule requires companies to disclose their Scope 3 emissions only if material or if a company has set a particular target or goal with respect to Scope 3 emissions. Companies could thus begin to measure their Scope 3 emissions now to determine materiality and if they will eventually need to make Scope 3 emissions-related disclosures. Unfortunately, there is no consensus around how exactly to measure these emissions (a process known as “carbon accounting”), in part because companies must rely on their supply chains to provide this information. Nevertheless, companies could still initiate these conversations with their supply chains. For companies in the financial sector, the Partnership for Carbon Accounting Financials’ [Global GHG Accounting and Reporting Standard for the Financial Industry](#) provides useful guidance on carbon accounting for different asset classes. Given the uncertainty around measuring Scope 3 emissions, the proposed rule contains a safe harbor provision that provides that Scope 3 emissions disclosures will not be deemed fraudulent unless it is shown that the statement was made without a reasonable basis or was disclosed in other than good faith.

5) Discuss with Auditors

To develop a better understanding of the new rule and its implications, companies should be engaging in a dialogue with their independent auditors. Under the proposed rules, large accelerated filers and accelerated filers will need to provide an attestation report from an independent GHG emissions attestation provider to cover Scope 1 and 2 greenhouse gas emissions metrics, subject to a phase-in period. While the report need not be provided by an outside auditor, many companies likely may opt to have an accounting firm issue the attestation. The proposed rules will likely create high demand for service providers in this space, so registrants may wish to begin discussions with potential service providers.

6) Write a Comment Letter to the SEC

The SEC has requested public comments on the proposed amendments by either May 20, 2022 or 30 days after the date of publication in the Federal Register, whichever is later. The SEC will review and take these comments into consideration before issuing a final rule. Accordingly, a company should consider filing a comment letter with the SEC to express any particular points of concern or support regarding the new rule, as well as to suggest any necessary changes that should be made before the rule is finalized.
