

Clients & Friends Memo

SEC Proposes Climate-Related Changes to Regulation S-K and Regulation S-X

March 23, 2022

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.¹ If adopted as proposed, the amendments would impose burdensome requirements on registrants (both in financial terms and in terms of managerial time and attention). Although the SECs proposal made clear that asset-backed securities issuers are not covered by the proposed rules, the SEC indicated that they are continuing to consider whether and how to apply similar regulations to asset-backed securities issuers.

The SEC requested public comments by either May 20, 2022 or 30 days after the date of publication in the Federal Register, whichever is later. This memorandum, which is intended as a summary of the 510-page proposal, provides an overview of the new proposed disclosures, proposed phase-in periods, safe harbors and other accommodations provided under the proposed rules. Subsequent articles will undertake a more detailed analysis of how companies should plan to address the proposed rules should they be adopted as well as potential regulatory or civil liability exposure and mitigates thereto.

Brief Overview of the New Disclosures

In summary, the proposed rules consist of amendments to Regulation S-K and Regulation S-X that would require a registrant to disclose information about:

- Oversight and governance of climate-related risks by the registrant's board and management;
- How any climate-related risks identified by the registrant have had or are likely to have a material impact on its business and consolidated financial statements of the company, and how those risks may manifest over the short-, medium-, or long-term;
- How any identified climate-related risks have affected or are likely to affect the registrant's strategy, business model, and outlook;

¹ The Enhancement and Standardization of Climate-Related Disclosures for Investors, Exchange Act Release Nos. 33-11042; 34-94478; File No. S7-10-22, Fed.Sec.L.Rep. (proposed Mar. 21, 2022) (the “[Proposing Release](#)”).

- The registrant's processes for identifying, assessing, and managing climate-related risks and whether any such processes are integrated into the registrant's overall risk management system or processes;
- The potential impact of climate-related events (severe weather events and other natural conditions as well as physical risks identified by the registrant) and transition activities (including transition risks identified by the registrant) on the line items of a registrant's consolidated financial statements and related expenditures, and disclosure of estimates of the financial impacts of such climate-related events and transition activities and the assumptions underlying those estimates;
- Scopes 1 and 2 greenhouse gas emissions² metrics, both broken out by constituent greenhouse gases (eight different greenhouse gasses are specified in the proposal) and also presented in the aggregate;
- Scope 3 greenhouse gas emissions³ metrics, if material, or if the registrant has set a greenhouse gas emissions reduction target or goal that includes its Scope 3 emissions; and
- The registrant's climate-related targets or goals, and transition plan, if the registrant has one.

Where Will the New Disclosures be Presented?

Under the proposed rules, a registrant, whether a domestic issuer or a foreign private issuer, would be required to provide the climate-related disclosures in its registration statements and annual reports under the Securities Exchange Act of 1934 (the "Exchange Act"). The proposed rules would require a new, separately-captioned "Climate-Related Disclosure" section in these filings, where disclosure responsive to the newly proposed Items 1500-1506 of Regulation S-K would be included. Certain climate-related financial statement metrics and related disclosure required by

² "Scope 1 emissions" would be defined as direct GHG emissions from operations that are owned or controlled by a registrant. "Scope 2 emissions" would be defined as indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant. Proposing Release at 480.

³ "Scope 3 emissions" would be defined as all indirect GHG emissions not otherwise included in a registrant's Scope 2 emissions, which occur in the upstream and downstream activities of a registrant's value chain. Upstream activities in which Scope 3 emissions might occur include: (i) a registrant's purchased goods and services; (ii) a registrant's capital goods; (iii) a registrant's fuel and energy related activities not included in Scope 1 or Scope 2 emissions; (iv) transportation and distribution of purchased goods, raw materials, and other inputs; (v) waste generated in a registrant's operations; (vi) business travel by a registrant's employees; (vii) employee commuting by a registrant's employees; and (viii) a registrant's leased assets related principally to purchased or acquired goods or services. Downstream activities in which Scope 3 emissions might occur include: (i) transportation and distribution of a registrant's sold products, goods or other outputs; (ii) processing by a third party of a registrant's sold products; (iii) use by a third party of a registrant's sold products; (iv) end-of-life treatment by a third party of a registrant's sold products; (v) a registrant's leased assets related principally to the sale or disposition of goods or services; (vi) a registrant's franchises; and (vii) investments by a registrant. *Id.*

Regulation S-X would have to be disclosed in a note to the registrant's audited financial statements.⁴

Phase-In Periods, Safe Harbors, and Other Accommodations

The proposed rules would include various phase-in periods, safe harbors and other accommodations, including:

- A phase-in for all registrants to begin to make the disclosures, with the compliance date dependent on the registrant's filer status, but no earlier than fiscal year 2023 (filed in 2024);
- A phase-in period for Scope 3 emissions disclosure, including a period to transition from obtaining a limited assurance attestation report to a reasonable assurance attestation report;
- A safe harbor from liability for Scope 3 emissions disclosure, and an exemption from the Scope 3 emissions disclosure requirement for smaller reporting companies ("SRCs");⁵
- A provision permitting a registrant, if actual reported data is not reasonably available, to use a reasonable estimate of its GHG emissions⁶ for its fourth fiscal quarter;⁷
- A minimum 1% threshold before certain financial metrics have to be disclosed; and
- An exclusion of asset-backed securities issuers from the proposed rule, while the SEC considers whether and how best to regulate such issuers.

Amendments to Regulation S-K

Item 1501 (Governance)

Proposed new Item 1501 (Governance) would require a registrant to disclose, as applicable, certain specified information concerning the board's oversight of climate-related risks and management's role in assessing and managing those risks.⁸

⁴ *Id.* at 46.

⁵ The SEC's rules define "smaller reporting company" or "SRC" to mean "an issuer that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not a smaller reporting company and that: (1) had a public float of less than \$250 million; or (2) had annual revenues of less than \$100 million and either: (i) no public float; or (ii) a public float of less than \$700 million." *See id.* at 48 n.143 (citing 17 CFR 229.10(f)(1), 230.405, and 17 CFR 240.12b-2).

⁶ "GHG emissions" would be defined as direct and indirect emissions of greenhouse gases expressed in metric tons of carbon dioxide equivalent (CO₂e), of which: (1) direct emissions are GHG emissions from sources that are owned or controlled by a registrant. (2) indirect emissions are GHG emissions that result from the activities of the registrant, but occur at sources not owned or controlled by the registrant. *Id.* at 478-479.

⁷ Under such circumstances, the registrant would be required to promptly disclose, in a subsequent filing any material difference between the estimate used and the actual, determined GHG emissions data for the fourth fiscal quarter. *Id.* at 48.

⁸ "Climate-related risks" would be defined as the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated financial statements, business operations, or value chains, as a whole. *Id.* at 477. "Value chain" will mean the upstream and downstream activities related to a registrant's operations. More specifically, under the

Item 1502 (Strategy, Business Model, and Outlook)

Describe Climate-Related Risks. Proposed new Item 1502 (Strategy, business model, and outlook) would require a description of climate-related risks reasonably likely to have a material impact on the registrant's business or consolidated financial statements, which may manifest over the short, medium and long-term.⁹ A registrant would be required to discuss such climate-related risks and specify whether they are physical or transition risks¹⁰ and the nature of the risks presented.¹¹

Physical Risks. For physical risks, a registrant would be required to describe the nature of the risk, including whether it is an acute or chronic risk, and the location of the properties, processes, or operations subject to the physical risk. If a risk concerns the flooding of buildings, plants, or properties located in flood hazard areas, a registrant would also be required to disclose the percentage of those assets (square meters or acres) that are located in flood hazard areas. If a risk concerns the location of assets in regions of high or extremely high water stress, a registrant would be required to disclose the amount of assets (e.g., book value and as a percentage of total assets) located in those regions, and to also disclose the percentage of the registrant's total water usage from water withdrawn in those regions.¹²

Transition Risks. For transition risks, a registrant would be required to describe the nature of the risk, including whether it relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), liability, reputational, or other transition-related factors, and how those factors impact the registrant.¹³

proposed definition, upstream activities will include activities by a party other than the registrant that relate to the initial stages of a registrant's production of a good or service (e.g., materials sourcing, materials processing, and supplier activities). Downstream activities would be defined to include activities by a party other than the registrant that relate to processing materials into a finished product and delivering it or providing a service to the end user (e.g., transportation and distribution, processing of sold products, use of sold products, end of life treatment of sold products, and investments). *Id.* at 480-482.

⁹ *Id.* at 60 [emphasis added].

¹⁰ "Physical Risks" would be defined as both acute risks and chronic risks to the registrant's business operations or the operations of those with whom it does business. "Transition risks" would be defined as the actual or potential negative impacts on a registrant's consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks, such as increased costs attributable to changes in law or policy, reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, 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. *Id.* at 477-478.

¹¹ *Id.* at 483.

¹² *Id.*

¹³ *Id.*

Time Horizons. A registrant would be required to describe how it defines short-, medium-, and long-term time horizons, including how the registrant takes into account or reassesses the expected useful life of its assets and the time horizons for its climate-related planning processes and goals.¹⁴

Impacts of the Climate-Related Risks. A registrant would be required to describe the actual and potential impacts of climate-related risks identified in response to the above-described disclosures pursuant to Item 1502 (strategy, business model and outlook) on the registrant's strategy, business model, and outlook, including impacts on its business operations, including the types and locations of its operations, products or services, suppliers and other parties in its value chain, activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes, expenditure for research and development, and any other significant changes or impacts.

Further, the registrant would be required to provide a narrative discussion of whether and how any of the described climate-related risks have affected or are reasonably likely to affect the registrant's consolidated financial statements, with reference to any of the climate-related metrics disclosed pursuant to the proposed amendments to Regulation S-X that demonstrate that the identified climate-related risks have had a material impact on reported financial condition or operations.¹⁵

Internal Carbon Price. If a registrant maintains an internal carbon price, certain technical disclosures would be required.¹⁶

Discussion of Strategy, Analytical Tools, and Scenario Analysis. A registrant would also be required to describe the resilience of its business strategy in light of potential future changes in climate-related risks. Furthermore, a registrant would be required to describe any analytical tools, such as scenario analysis, that the registrant uses to assess the impact of climate-related risks on its business and consolidated financial statements, and to support the resilience of its strategy and business model. If the registrant uses scenario analysis¹⁷ to assess the resilience of its business strategy to climate-related risks, the registrant would be required to disclose the scenarios.¹⁸

¹⁴ *Id.* at 484.

¹⁵ *Id.* at 484-485.

¹⁶ "Internal carbon price" would mean an estimated cost of carbon emissions used internally within an organization. *Id.* at 485-486.

¹⁷ "Scenario analysis" would be defined as a process for identifying and assessing a potential range of outcomes of various possible future climate scenarios, and how climate-related risks may impact a registrant's operations, business strategy, and consolidated financial statements over time. For example, registrants might use scenario analysis to test the resilience of their strategies under certain future climate scenarios, such as those that assume global temperature increases of 3 °C, 2 °C, and 1.5 °C above pre-industrial levels. *Id.* at 479.

¹⁸ *Id.* at 486.

Item 1503 (Risk Management)

Identifying, Assessing, and Managing Climate-Related Risks. Proposed new Item 1503 (Risk management) would require a description of any processes a registrant has for identifying, assessing, and managing climate-related risks. In particular, a registrant would be required to disclose how it determines the relative significance of climate-related risks compared to other risks, considers existing or likely regulatory requirements or policies, such as GHG emissions limits, when identifying climate-related risks, considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks, and determines the materiality of climate-related risks, including how it assesses the potential scope and impact of an identified climate-related risk, such as the risks identified in response to Item 1502 (Strategy, business model, and outlook) (summarized above).

Further, a registrant would be required to disclose, as applicable, how the registrant decides whether to mitigate, accept, or adapt to a particular risk, prioritizes whether to address climate-related risks, and determines how to mitigate any high priority risks. A registrant would also be required to disclose whether and how any processes described in response to the above-described requirements of Item 1503 (Risk management) are integrated into the registrant's overall risk management system or processes. If a separate board or management committee is responsible for assessing and managing climate-related risks, a registrant will be required to disclose how that committee interacts with the registrant's board or management committee governing risks.¹⁹

Transition Plans. If a registrant has adopted a transition plan²⁰, it would be required to describe the plan, including the relevant metrics and targets. The disclosure about the transition plan would be required to be updated each fiscal year by describing the actions taken during the year to achieve the plan's targets or goals. The registrant would also be required to discuss, as applicable, how it plans to mitigate or adapt to any identified physical risks, including but not limited to those concerning energy, land, or water use and management, and how the registrant plans to mitigate or adapt to any identified transition risks.

Item 1504 (GHG Emissions Metrics)

Under proposed new Item 1504 (GHG emissions metrics), disclosure would be required about a registrant's GHG emissions for its most recently completed fiscal year, and for the historical fiscal

¹⁹ *Id.* at 486-487.

²⁰ "Transition plan" would be defined as a registrant'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. *Id.* at 481.

years included in its consolidated financial statements in the filing, to the extent historical GHG emissions data is reasonably available.²¹

Scope 1 and Scope 2 Emissions. A registrant would be required to disclose its Scope 1 emissions and Scope 2 emissions separately after calculating them from all sources that are included in the registrant's organizational and operational boundaries. In making such disclosures, a registrant would have to determine its "organizational boundaries," which would be defined as the boundaries that determine the operations owned or controlled by a registrant for the purpose of calculating its GHG emissions, as well as its "operational boundaries," which would be defined as the boundaries that determine the direct and indirect emissions associated with the business operations owned or controlled by a registrant.²² A registrant would be permitted to exclude emissions from investments that are not consolidated, are not proportionately consolidated, or that do not qualify for the equity method of accounting in the registrant's consolidated financial statements.²³

Scope 3 Emissions. Scope 3 emissions would be required to be disclosed *if material* [emphasis added] or if a registrant has set a GHG emissions reduction target or goal that includes Scope 3 emissions. If required to disclose Scope 3 emissions, a registrant would be required to identify the categories of upstream or downstream activities that were included in the calculation. The data sources used to calculate the Scope 3 emissions would be required to be described.

SRCs would be exempt from the requirement to disclose Scope 3 emissions.²⁴ Emissions disclosures should be broken out by various individual specified chemical compounds,²⁵ as well as disclosed in the aggregate, expressed in terms of metric tons of carbon dioxide equivalent (CO₂e), excluding the impact of any purchased or generated offsets.²⁶

When determining whether its Scope 3 emissions are material, and when disclosing those emissions, in addition to emissions from activities in its value chain, a registrant must include GHG emissions from outsourced activities that it previously conducted as part of its own operations, as reflected in the financial statements for the periods covered in the filing.²⁷

²¹ *Id.* at 488.

²² *Id.* at 479.

²³ *Id.* at 489.

²⁴ *Id.* at 489-490.

²⁵ The proposed rule defines "greenhouse gases" as carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), nitrogen trifluoride (NF₃), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). *Id.* at 478.

²⁶ *Id.* at 489.

²⁷ *Id.* at 493.

GHG Intensity. Using the sum of Scopes 1 and 2 emissions, the proposed amendments to Regulation S-K would require the disclosure of a registrant's GHG intensity (calculated as metric tons of CO₂e per unit of total revenue). The registrant would also be required to disclose CO₂e per unit of production. If the registrant disclosed Scope 3 emissions, then it must also separately disclose GHG intensity using Scope 3 emissions only.²⁸

Methodology. A registrant would be required to describe the methodology, significant inputs, and significant assumptions used to calculate its GHG emissions. This description must include the registrant's organizational boundaries, operational boundaries, calculation approach (including any emission factors used and the source of the emission factors), and any calculation tools used to calculate the GHG emissions. The description of the registrant's approach to categorization of emissions and emissions sources would be required to explain how it determined the emissions to include as direct emissions (for the purpose of calculating its Scope 1 emissions) and indirect emissions (for the purpose of calculating its Scope 2 emissions). A registrant would also be required to disclose any material change to the methodology or assumptions underlying its GHG emissions disclosure from the previous fiscal year.²⁹

Organizational Boundaries. The organizational boundaries and any determination of whether a registrant owns or controls a particular source for GHG emissions would be required to be consistent with the registrant's consolidated financial statements in terms of the scope of entities, operations, assets, and other holdings within its business organization as those included in, and based upon the same set of accounting principles. A registrant would be required to use the same organizational boundaries when calculating its Scope 1 emissions and Scope 2 emissions. If required to disclose Scope 3 emissions, a registrant would be required to also apply the same organizational boundaries used when determining its Scopes 1 and 2 emissions as an initial step in identifying the sources of indirect emissions from activities in its value chain over which it lacks ownership and control and which must be included in the calculation of its Scope 3 emissions.³⁰

Use of Estimates. Reasonable estimates would be permitted when disclosing GHG emissions, but the underlying assumptions and reasons for using the estimates would be required to be described. When disclosing its GHG emissions for its most recently completed fiscal year, if actual reported data is not reasonably available, a registrant would be permitted to use a reasonable estimate of its GHG emissions for its fourth fiscal quarter, together with actual, determined GHG emissions data for the first three fiscal quarters. A subsequent filing would be required to disclose any material difference between the estimate used and the actual fourth fiscal quarter GHG emissions data.

²⁸ *Id.* at 490.

²⁹ *Id.* at 491-492.

³⁰ *Id.* at 491.

Presentation of estimated Scope 3 emissions in terms of a range would be permitted, as long as the registrant also discloses its reasons for using the range and the underlying assumptions.³¹

Use of Third-Party Data. A registrant would be required to disclose, to the extent material and as applicable, any use of third-party data when calculating its GHG emissions. It would be required to identify the data source and the registrant's process to obtain and assess such data.³²

Data Gaps. A registrant would be required to disclose, to the extent material and as applicable, any gaps in the data required to calculate its GHG emissions. If a registrant discloses any data gaps encountered when calculating its GHG emissions, it would be required to also discuss whether it used proxy data or another method to address such gaps.³³

Safe Harbor from Liability for Scope 3 Emissions Disclosures. Scope 3 emissions disclosures that are made as required under Items 1500 through 1506 in a document filed with the SEC will not be deemed a fraudulent statement unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.³⁴

Item 1505 (Attestation of Scope 1 and Scope 2 Emissions Disclosure)

Under proposed new Item 1505 (Attestation of Scope 1 and Scope 2 emissions disclosure), accelerated filers³⁵ and large accelerated filers³⁶ would be required to include an attestation report covering the disclosed Scope 1 and Scope 2 emissions, as well as provide certain specified

³¹ *Id.* at 492.

³² *Id.*

³³ *Id.* at 493.

³⁴ For this purpose, the term "fraudulent statement" will mean a statement that is an untrue statement of material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or that constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud as those terms are used in the Securities Act of 1933 or the Exchange Act or the rules or regulations promulgated thereunder. *Id.* at 493-494.

³⁵ See 17 CFR 240.12b-2 (defining "accelerated filer" as an issuer after it first meets the following conditions as of the end of its fiscal year: (i) the issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$75 million or more, but less than \$700 million, as of the last business day of the issuer's most recently completed second fiscal quarter; (ii) the issuer has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; (iii) the issuer has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and (iv) the issuer is not eligible to use the requirements for SRCs under the SRC revenue test).

³⁶ See 17 CFR 240.12b-2 (defining "large accelerated filer" as an issuer after it first meets the following conditions as of the end of its fiscal year: (i) the issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter; (ii) the issuer has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; (iii) the issuer has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and (iv) the issuer is not eligible to use the requirements for SRCs under the SRC revenue test).

disclosures about the service provider it engaged to provide the report. The attestation provider need not be a registered public accounting firm.³⁷

Phase-In Period. Both types of filers would be given a phase-in period of one fiscal year to allow for transition to providing limited assurance. Subsequently, another phase-in period of two additional fiscal years would be given to allow for transition to providing reasonable assurance. These phase-in periods would run from the Scopes 1 and 2 disclosure compliance dates, which would be based on the effective date of the final rule, and would be different as between accelerated filers and large accelerated filers. For example, if the effective date of the final rule were to occur in December 2022, and the registrant has a fiscal year-end of December 31, then the compliance dates, limited assurance dates, and reasonable assurance dates would be as set forth below:³⁸

Filer Type	Scopes 1 and 2 GHG Disclosure Compliance Date	Limited Assurance	Reasonable Assurance
Accelerated Filer	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)	Fiscal year 2027 (filed in 2028)
Large Accelerated Filer	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)	Fiscal year 2026 (filed in 2027)

The attestation report will be required to be prepared and signed by a “GHG emissions attestation provider”, which would be required to meet certain requirements regarding its experience and independence, among other requirements.

The attestation report would be required to be included in the filing. The proposed amendments to Regulation S-K provide detailed standards for the attestation report to meet. In addition, the registrant would be required to make specified disclosures regarding licensure of the attestation provider, whether the attestation engagement is subject to any oversight inspection program, and whether the attestation provider is subject to record-keeping requirements.³⁹

Disclosure of Voluntary Attestation. Notably, even if a particular registrant is not required to include an attestation report (because, for instance, it is not an accelerated filer or large accelerated filer), if the registrant’s GHG emissions disclosures were subject to third-party attestation or verification,

³⁷ The SEC’s decision to include the requirement for greenhouse gas emissions disclosure in the amendments to Regulation S-K, rather than Regulation S-X, had the effect of making such disclosures not subject to certain Sarbanes-Oxley requirements regarding internal control over financial reporting that would have required a PCAOB-registered public accounting firm to provide assurance. During the Commission’s open meeting, Commissioner Lee requested public comment on whether this decision results in less reliability of greenhouse gas emissions disclosure.

³⁸ *Id.* at 226.

³⁹ *Id.* at 496-498.

the registrant would be required to identify the provider of such attestation or verification, describe the attestation or verification standard used, describe the level and scope of attestation or verification provided, briefly describe the results of the attestation or verification, disclose whether the third-party service provider has any other business relationships with or has provided any other professional services to the registrant that may lead to an impairment of the service provider's independence with respect to the registrant, and disclose any oversight inspection program to which the service provider is subject.⁴⁰

Item 1506 (Targets and Goals)

Under proposed new Item 1506 (Targets and goals), if a registrant has set any targets or goals related to the reduction of GHG emissions, or any other climate-related target or goal, then the registrant would be required to make certain disclosures. More specifically, it would be required to disclose the targets or goals, including, as applicable, a description of the scope of activities and emissions included in the target, the unit of measurement, the defined time horizon for achievement of the target, and whether the time horizon is consistent with goals established by a climate-related treaty, law, regulation, policy, or organization, the defined baseline time period and baseline emissions against which progress would be tracked, any interim targets, and how the registrant intends to meet its climate-related targets or goals.

In addition, the registrant would be required to disclose data to indicate whether it is making progress toward meeting the target or goal and how such progress has been achieved. A registrant would be required to update this disclosure each fiscal year. If carbon offsets or renewable energy credits have been used as part of a registrant's plan to achieve climate-related targets or goals, the registrant would be required to disclose additional information about the carbon offsets.⁴¹

Amendments to Regulation S-X

Under the proposed amendments to Regulation S-X, if a registrant would be required to file the above-summarized disclosures required by the proposed amendments to Regulation S-K in a form that also requires audited financial statements,⁴² then it would be required to disclose in a note to its financial statements certain climate-related financial statement metrics.

⁴⁰ *Id.* at 498-499. It seems likely that, as a result of this provision, an accelerated filer or large accelerated filer who voluntarily obtains an attestation prior to the "Scopes 1 and 2 GHG Disclosure Compliance Date" as set forth in the table above would be required to comply with the requirements to make disclosures regarding voluntary attestations.

⁴¹ *Id.* at 499-500.

⁴² The SEC noted that, for example, the climate-related note to the financial statements would not be required in a Form 10-Q filing. *Id.* at 116.

Financial Impact Metrics

Financial Impacts of Severe Weather Events and Other Natural Conditions. A registrant would be required to disclose the impact of severe weather events and other natural conditions, such as flooding, drought, wildfires, extreme temperatures, and sea level rise on any relevant line items in the registrant's consolidated financial statements. Disclosure would be required to be presented, at a minimum, on an aggregated line-by-line basis for all negative impacts and, separately, at a minimum, on an aggregated line-by-line basis for all positive impacts. Impacts may include, for example, changes to revenues or costs from disruptions to business operations or supply chains, impairment charges and changes to the carrying amount of assets (such as inventory, intangibles, and property, plant and equipment), changes to loss contingencies or reserves (such as environmental reserves or loan loss allowances), and changes to total expected insured losses. However, these disclosures will not be required if the sum of the absolute values of all the impacts on the line item is less than 1% of the total line item for the relevant fiscal year.⁴³

Financial Impacts Related to Transition Activities. A registrant would be required to disclose the impact of any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks on any relevant line items in the registrant's consolidated financial statements. Disclosure would be required to be presented, at a minimum, on an aggregated line-by-line basis for all negative impacts and, separately, at a minimum, on an aggregated line-by-line basis for all positive impacts. Impacts may include, for example, changes to revenue or cost due to new emissions pricing or regulations resulting in the loss of a sales contract, changes to cash flow from changes in upstream costs, such as transportation of raw materials, changes to the carrying amount of assets (such as intangibles and property, plant, and equipment) due to, among other things, a reduction of the asset's useful life or a change in the asset's salvage value by being exposed to transition activities, and changes to interest expense driven by financing instruments such as climate-linked bonds issued where the interest rate increases if certain climate-related targets are not met.⁴⁴ However, these disclosures would not be required if the sum of the absolute values of all the impacts on the line item is less than 1% of the total line item for the relevant fiscal year.⁴⁵

Expenditure Metrics

Expenditure to Mitigate Risks of Severe Weather Events and Other Natural Conditions. A registrant would be required to disclose separately the aggregate amount of expenses and the aggregate amount of capitalized costs incurred during the fiscal years presented to mitigate the risks from severe weather events and other natural conditions.⁴⁶

⁴³ *Id.* at 472-473.

⁴⁴ *Id.* at 473.

⁴⁵ *Id.* at 472.

⁴⁶ *Id.* at 473-474.

Expenditure Related to Transition Activities. A registrant would be required to disclose separately the aggregate amount of expenses and the aggregate amount of capitalized costs incurred to reduce GHG emissions or otherwise mitigate exposure to transition risks. A registrant that has disclosed GHG emissions reduction targets or other climate-related commitments must disclose the expenditures and costs related to meeting its targets, commitments, and goals.⁴⁷

Financial Estimates and Assumptions

Financial Estimates and Assumptions Impacted by Severe Weather Events and Other Natural Conditions. A registrant would be required to disclose whether the estimates and assumptions used to produce the consolidated financial statements were impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions. If applicable, the registrant would be required to provide a qualitative description of how the development of such estimates and assumptions were impacted by such events.⁴⁸

Financial Estimates and Assumptions Impacted by Transition Activities. A registrant would be required to disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were impacted by risks and uncertainties associated with, or known impacts from, a potential transition to a lower carbon economy or any climate-related targets disclosed by the registrant. If applicable, the registrant would be required to provide a qualitative description of how the development of such estimates and assumptions were impacted by such a potential transition or the registrant's disclosed climate-related targets.⁴⁹

Impact of Identified Climate-Related Risks.

A registrant would also be required to disclose the impact of any climate-related risks that it identified pursuant to Item 1502 (Strategy, business model, and outlook) on any of the financial statement metrics disclosed pursuant to the above-summarized disclosures under Regulation S-X.⁵⁰ However, this disclosure will not be required if the sum of the absolute values of all the impacts on the line item is less than 1% of the total line item for the relevant fiscal year.⁵¹

Impact of Climate-Related Opportunities

A registrant would be permitted to also include the impact of any opportunities arising from severe weather events and other natural conditions, any impact of efforts to pursue climate-related opportunities associated with transition activities, and the impact of any other climate-related opportunities on any of the financial statement metrics disclosed pursuant to the above-summarized

⁴⁷ *Id.* at 474.

⁴⁸ *Id.* at 474-475.

⁴⁹ *Id.* at 475.

⁵⁰ *Id.* at 475.

⁵¹ *Id.* at 472.

disclosures under Regulation S-X. If a registrant discloses the impact of an opportunity, it must do so consistently for the fiscal years presented, including for each financial statement line item and all relevant opportunities identified by the registrant.⁵²

Historical Periods

Disclosure would be required for the registrant’s most recently completed fiscal year following enactment of a final rule, and for the historical fiscal year(s) included in the consolidated financial statements in the filing.⁵³

Compliance Dates

The following table summarizes the SEC’s proposed phase-ins for the date by which compliance with the climate-related disclosure requirements would be required. The table assumes, for illustrative purposes, that the proposed rules would be adopted with an effective date in December 2022, and that the registrant has a December 31st fiscal year-end.⁵⁴

Registrant Type – Filer Status	Disclosure Compliance Date		Financial Statement Metrics Audit Compliance Date
	All proposed disclosures, including Scope 1 and Scope 2 GHG emissions metrics, and associated intensity metric, but excluding Scope 3.	Scope 3 GHG emissions metrics and associated intensity metric	
Large Accelerated Filer	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)	Same as disclosure compliance date
Accelerated Filer and Non-Accelerated Filer	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)	
Small reporting company	Fiscal year 2025 (filed in 2026)	Exempted	

⁵² *Id.* at 475.

⁵³ *Id.*

⁵⁴ *Id.* at 302-303.

Exemption for Asset-Backed Securities Issuers

The proposed rules would not apply to asset-backed securities issuers. The SEC indicated that it is continuing to evaluate whether to require climate-related disclosures regarding asset-backed securities, as well as ways in which climate disclosure can be tailored to various asset classes.⁵⁵

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

Jason M. Halper	+1 212 504 6300	jason.halper@cwt.com
Erica L. Hogan	+1 212 504 6645	erica.hogan@cwt.com
Michael J. Ruder	+1 704 348 5303	michael.ruder@cwt.com
Sara E. Bussiere	+1 212 504 6255	sara.bussiere@cwt.com
Timbre L. Shriver	+1 212 504 6377	timbre.shriver@cwt.com
Elizabeth R. Moore	+1 212 504 6441	elizabeth.moore@cwt.com

⁵⁵ *Id.* at 292.