



## THE ENHANCEMENT AND STANDARDISATION OF US CLIMATE-RELATED DISCLOSURES FOR INVESTORS

The much-anticipated Securities and Exchange Commission (SEC) proposals for enhancing and standardising climate-related disclosures for investors<sup>1</sup> (disclosure proposals)<sup>2</sup> were published on 21 March 2022, marking a significant step in the current US government's response to climate change.

The disclosure proposals will require registrants<sup>3</sup> (domestic or foreign) to include certain climate-related disclosures in their registration statements and periodic reports,<sup>4</sup> including information about climate-related risks that are reasonably likely to have a material<sup>5</sup> impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements.

The required information on climate-related risks would also include disclosure of a registrant's greenhouse gas (GHG) emissions, which have become a commonly used metric to assess a registrant's exposure to such risks.

### A snapshot of the disclosure proposals

The latest disclosure proposals, a lengthy tome at 505 pages, build on the SEC's previous rules and guidance on climate-related disclosures, which date back to the 1970's. This was then followed by the SEC's 2010 interpretative Guidance.<sup>6</sup>

The SEC's most recent disclosure proposals provide, for public comment, amendments to its rules under the Securities Act of 1933 and the Securities Exchange Act of 1934. As such, the disclosure proposals would require a registrant to disclose information about:



1 The registrant's governance of climate-related risks and relevant risk management processes;



2 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, which may manifest over the short, medium or long-term;



3 How any identified climate-related risks have affected or are likely to affect the registrant's strategy, business model, and outlook; and



4 The impact of climate-related events (severe weather events and other natural conditions) and transition activities on the line items of a registrant's consolidated financial statements, as well as on the financial estimates and assumptions used in the financial statements.



### Scenario analysis

For registrants that already conduct scenario analysis, have developed transition plans, or publicly set climate-related targets or goals, the proposed amendments would require certain disclosures to enable investors to understand those aspects of the registrants' climate risk management.

### GHG emissions

The disclosure proposals would also require a registrant to disclose information about its direct GHG emissions (Scope 1) and indirect emissions from purchased electricity or other forms of energy (Scope 2).

In addition, a registrant would be required to disclose GHG emissions from upstream and downstream activities in the value chain (Scope 3) if material or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions.

The SEC state that the disclosure proposals for GHG emissions would provide investors with decision useful information to assess a registrant's exposure to, and management of, climate-related risks, and in particular, transition risks.

The disclosure proposals are also intended to provide a safe harbour for liability from Scope 3 emissions disclosure and an exemption from the Scope 3 emissions disclosure requirement for smaller reporting companies.

### Impacted forms

Each of Form S-1, Form F-1, Form S-4, Form F-4, Form S-11, Form 10, Form 10-K, Form 10-Q, Form 20-F and Form 6-K would be impacted by the disclosure proposals. So, the registrant (including a foreign private issuer) will need to:



Provide the climate-related disclosure in its registration statements and Exchange Act annual reports, for example on Form 10-K;



Provide the Regulation S-K mandated climate-related disclosure in a separate, appropriately captioned section of its registration statement or annual report;



Provide the Regulation S-X mandated climate-related financial statement metrics and related disclosure in a note to its consolidated financial statements;



Electronically tag both narrative and quantitative climate-related disclosures in Inline XBRL; and



If an accelerated or large accelerated filer, obtain an attestation report from an independent attestation service provider covering, at a minimum, Scopes 1 and 2 emissions disclosures.

### Comparison to other disclosure frameworks

The disclosure proposals will be familiar to those companies that already provide disclosures based on the Task Force on Climate-related Financial Disclosures (TCFD) and the Greenhouse Gas Protocol,<sup>7</sup> being modelled in part on those other disclosure frameworks.

### Views from the SEC's Commissioners

Chair Gary Gensler, alongside Commissioner Caroline A Crenshaw, and Commissioner Allison Herren Lee, supported the disclosure proposals, hoping that, if adopted, would provide investors with consistent, comparable, and decision-useful information for making their investment decisions and would provide consistent and clear reporting obligations for issuers.



Commissioner Peirce, on the other hand, provided several critical statements on the disclosure proposals, some of which said that the existing rules already cover material climate risks, that the proposed rules dispense with materiality in some places but distorts it in others.

Commissioner Peirce also said that the disclosure proposals will not lead to comparable, consistent and reliable disclosures, and that the SEC lacks authority to propose such rules – which was evident in the title of her Statement, 'We are not the Securities and Environment Commission – at least not yet'.<sup>8</sup>

### Proposed timelines

The disclosure proposals would include a phase-in period for all registrants, with the compliance date dependent on the registrant's filer status, and an additional phase-in period for Scope 3 emissions disclosure.

Under the disclosure proposals, accelerated filers and large accelerated filers would be required to include an attestation report from an independent attestation service provider covering Scopes 1 and 2 emissions disclosures, with a phase-in over time, to promote the reliability of GHG emissions disclosures for investors.

The proposing release will be published on SEC.gov and in the Federal Register. The comment period remains open for 30 days after publication in the Federal Register, or 60 days after the date of issuance and publication on sec.gov, whichever period is longer.

### Who should respond?

The disclosure proposals apply to Forms S-1, F-1, S-3, F-3, S-4, F-4, S-11, 6-K, 10, 10-Q, 10-K, and 20-F. So, the parties that will likely be affected include registrants subject to disclosure under those forms.

<sup>1</sup> Investors are referred to as including shareholders, investment advisers, and investment management companies.

<sup>2</sup> Securities and Exchange Commission 17 CFR 210, 229, 232, 239, and 249 [Release Nos. 33-11042; 34-94478; File No. S7-10-22] RIN 3235-AM87 The Enhancement and Standardization of Climate-Related Disclosures for Investors.

<sup>3</sup> The term registrant means the issuer of the securities for which the registration statement is filed.

<sup>4</sup> Such as Form 10-K.

<sup>5</sup> As defined by the SEC and consistent with Supreme Court precedent, a matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote.

<sup>6</sup> <https://www.sec.gov/rules/interp/2010/33-9106.pdf>.

<sup>7</sup> The Greenhouse Gas Protocol is a global standard for companies and organisations to measure and manage their GHG emissions. It arose out of the need to help countries and companies account for, report, and mitigate emissions, based on a report that identified an action agenda to address climate changes that included the need for standardised measurement of GHG emissions.

<sup>8</sup> See <https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321>.





## Content of the disclosure proposals

Requirements for public companies to disclose GHG emissions, not only their own, but also those of its suppliers and partners.

A registrant would be required to disclose information about:

-  The 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, which 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;
-  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;
-  If the registrant 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;
-  If the registrant uses scenario analysis to assess the resilience of its business strategy to climate-related risks, a description of the scenarios used, as well as the parameters, assumptions, analytical choices, and projected principal financial impacts;
-  If a registrant uses an internal carbon price, information about the price and how it is set;
-  The impact of climate-related events (severe weather events and other natural conditions) and transition activities on the line items of a registrant's consolidated financial statements, as well as the financial estimates and assumptions used in the financial statements;
-  The registrant's direct GHG emissions (Scope 1) and indirect GHG emissions from purchased electricity and other forms of energy (Scope 2), 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);
-  Indirect emissions from upstream and downstream activities in a registrant's value chain (Scope 3), if material, or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions, in absolute terms, not including offsets, and in terms of intensity; and
-  If the registrant has publicly set climate-related targets or goals, information about:
  - » 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 registrant intends to meet its climate-related targets or goals;
  - » Relevant data to indicate whether the registrant is making progress toward meeting the target or goal and how such progress has been achieved, with updates each fiscal year; and
  - » If carbon offsets or renewable energy certificates (RECs) have been used as part of the registrant's plan to achieve climate-related targets or goals, certain information about the carbon offsets or REC's, including the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the REC's.

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