

BRIEFING

US POLICY BRIEFING: SEC PROPOSED RULEMAKING ON CLIMATE-RELATED DISCLOSURES

April 7, 2022

INTRODUCTION

The Principles for Responsible Investment (PRI) is the world's leading initiative on responsible investment. The PRI has now over 4,900 signatories (pension funds, insurers, investment managers and service providers) to the PRI's six principles with approximately US\$121 trillion in assets under management.

The PRI supports its international network of signatories in implementing the Principles. As long-term investors acting in the best interests of their beneficiaries and clients, our signatories work to understand the contribution that environmental, social and governance (ESG) factors make to investment performance, the role that investment plays in broader financial markets and the impact that those investments have on the environment and society as a whole.

The PRI works to achieve this sustainable global financial system by encouraging adoption of the Principles and collaboration on their implementation; by fostering good governance, integrity and accountability; and by addressing obstacles to a sustainable financial system that lie within market practices, structures and regulation.

ABOUT THIS BRIEFING

On March 21, 2022, the U.S. Securities and Exchange Commission (SEC or the Commission) issued a notice of proposed rulemaking entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors",¹ which proposes climate-related disclosure requirements (the Proposed Rules or Proposals) for public companies and foreign private issuers to be included in periodic statements and annual reports. The Proposed Rules are subject to a 60-day public comment period prior to final rulemaking by the SEC.

This briefing provides an overview of the Proposed Rules, including major changes to existing regulation, links to background materials and instructions for submitting a public comment to the SEC.

¹ See Securities Exchange Commission, available at: <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

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BACKGROUND MATERIALS

In March 2021, Acting Chair Allison Herren Lee issued a [statement](#) requesting public comment on “whether current disclosures adequately inform investors” on climate change. In the statement, the Acting Chair acknowledged the lack of consistent and comparable climate change information for investors under existing SEC regulations and provided a list of questions for market participants to answer to help inform SEC staff in reviewing existing disclosure rules for climate change information.

In response, the PRI submitted a [sign on letter](#) and [consultation response](#). In addition, the PRI conducted a [survey for US signatories](#), [published a briefing](#) and [held webinars](#) to inform and answer signatory questions, and [hosted](#) SEC Chair Gary Gensler to discuss climate change disclosures.

For additional resources on PRI’s work on the SEC’s actions on climate disclosure, please visit our [SEC climate disclosure information hub here](#).

SUMMARY OF PROPOSED RULES

The Proposed Rules would require publicly listed companies and foreign private issuers in the US to provide disclosure of climate-related information in their SEC annual reports and registration statements. The Commission proposes revising the primary regulations dictating the contents and format of statements and annual financial reports, Regulations S-K, 17 CFR 229.1500-17 CFR 229.1507 (Regulation S-K) and S-X, 17 CFR 210.14-01-17 CFR 210.14-02 (Regulation S-X).

The Proposals would add a new subpart to Regulation S-K, including seven new articles, requiring disclosure of climate-related information based on the Task Force on Climate-Related Financial Disclosure recommendations, including information on governance, risk management, and impacts on strategy, business model, outlook, greenhouse gas (GHG) emissions metrics, and targets and goals as it relates to climate change if any.

In addition, the Proposed Rules would add a new article to Regulation S-X requiring disclosure in a note to financial statements that include disaggregated climate-related financial metrics falling under three categories of information: financial impact metrics; expenditure metrics; and financial estimates and assumptions.

Disclosure requirements would be phased in over time, beginning with filing in 2024 for fiscal year 2023, with additional disclosure and assurance requirements phased in depending on the company’s filer status with the SEC.

DISCLOSURE OF STRATEGY, BUSINESS MODEL AND OUTLOOK

The Proposals would require companies to disclose any climate-related risks reasonably likely to have a material impact on their business or consolidated financial statements, which may manifest over the short-, medium-, and long-term. Companies would also be required to disclose how any actual and potential impacts of climate risk described are considered as part of the companies' business strategy, financial planning, and capital allocation, and how any climate-related risks have affected or are reasonably likely to affect the company's consolidated financial statements.

In addition, companies would be required to include a discussion of relevant climate-related risks, specifying whether they are physical, or transition risks and the nature of the risks presented.

PHYSICAL RISKS

Companies would be required to provide detailed disclosures of material physical risks faced, including classification of the risk as acute (e.g., hurricanes) or chronic (e.g., sea-level rise or the decreased availability of freshwater).

TRANSITION RISKS

Companies would be required to disclose how they are impacted by material transition risks, which are the risks associated with the impact of regulatory, technological, and market changes related to mitigation of, or adaptation to, climate change.

IMPACT OF RISKS

Companies also would be required to describe the actual and potential impact of these risks on their strategy, business model, and outlook, and how such impacts are considered as part of their strategy, financial planning, and capital allocation, on a current and forward-looking basis.

Furthermore, the Proposals would require a description of how the company defines short-, medium-, and long-term time horizons, including how it takes into account or reassesses the expected useful life of assets and the time horizons for the company's climate-related planning processes and goals. It would also be required to describe the actual and potential impacts of any climate-related risks identified, including those on business operations, supply chains, activities to mitigate or adapt to climate risks, or expenditure for research and development.

RISK MANAGEMENT DISCLOSURE

The Proposed Rules would require companies to disclose any processes it has for identifying, assessing, and managing climate-related risks, including their determinations of the relative significance of climate-related risks compared to other risks. Disclosure would also be required as to how companies consider existing or likely regulatory requirements or policies, shifts in customer preferences, and how companies make decisions around their response to climate-related risks. An explanation of how companies determine the materiality of climate-related risks would also be required.

GOVERNANCE DISCLOSURE

The Proposals would require companies to disclose their internal governance of climate-related risks and opportunities. This would include a description of the board's oversight of climate-related activities, including any relevant expertise, any board member responsible for oversight of climate-related risks, the process by which the board considers climate-related risks, and whether and how the board sets climate-related targets or goals and oversees related activities.

Companies would also be required to disclose management's role in assessing and managing climate-related risks, including any specific positions or responsibilities, and the frequency and processes by which such responsible persons are informed about and monitor related risks. Moreover, they would be required to provide details that include how the company determines the materiality of climate-related risks, including how it assesses the potential size and scope of any identified climate-related risk.

ADDITIONAL DEPENDENT DISCLOSURE

The Proposed Rules set out additional disclosure requirements for any company that utilizes, or has stated publicly it utilizes, strategies to assess, monitor or mitigate climate-related risks. Specific disclosures are required if a company has set climate-related targets and goals, has established a transition plan, utilizes scenario analysis or uses an internal price on carbon emissions.

TARGETS & GOALS

If a company has set any targets or goals related to the reduction of GHG emissions, or any other climate-related target or goal (e.g., energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products), then it would have to provide additional clarifying information, including the scope of activities included in the target, relevant units of measurement, relevant time horizon, baseline time period emissions, any interim targets set by the company, and how climate-related targets or goals are intended to be met. This information must be updated in annual disclosures by describing the actions taken during the year to achieve its targets or goals, alongside any relevant data to indicate whether the company is making progress towards meeting the target or goal and how such progress has been achieved.

TRANSITION PLANS

If a company has adopted a transition plan, the Proposals would require disclosure including a description of the plan, its metrics, and targets to manage physical and transition risks.

SCENARIO ANALYSIS

If a company uses scenario analysis or a different analytical tool to assess the impact of climate-related risks or to increase resilience to foreseeable climate-related risks, it must disclose the type of scenarios included in the analysis, parameters, assumptions, and analytical choices included in the analysis. Additionally, companies would have to disclose the projected financial impacts for each scenario.

CARBON PRICE

If a company has set an internal carbon price, it would have to disclose the price per metric ton of carbon dioxide equivalent, the total price and how it is estimated to change over time, and the boundaries of measurement on which the price is based. Additionally, disclosure of the rationale for selecting the internal carbon price would be required.

EMISSIONS OFFSETS

If carbon offsets or renewable energy credits (RECs) have been used as part of a plan to achieve climate-related targets or goals, then disclosure would be required on the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECS, the source of the offsets or RECs, a description and location of the underlying projects, any registries or other authentication of the offsets or RECs, and the cost of the offsets or RECs.

GHG EMISSIONS METRICS

The Commission has based its proposed GHG emissions disclosure requirement primarily on the Greenhouse Gas Protocol's concept of scopes and related methodology and some definitions used by the Environmental Protection Agency. Disclosure would be made in absolute terms (excluding offsets) and in terms of intensity per unit of economic value. The Proposals define GHG emissions as "direct and indirect emissions of greenhouse gases expressed in metric tons of carbon dioxide equivalent". The greenhouse gases included are carbon dioxide, methane, nitrous oxide, nitrogen trifluoride, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, which is aligned with the Kyoto Protocols.

Scope 1 and 2 emissions would be required to be separately disclosed, both disaggregated by constituent GHG and in the aggregate. Scope 1 emissions are defined as the direct GHG emissions from operations that are owned or controlled by a company and Scope 2 emissions are 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 company. Calculations would be based on all sources that are included in the company's organizational and operational boundaries.

Separate disclosure of Scope 3 emissions would be required if those emissions are material, or if the company has set a GHG emission reduction goal or target that includes Scope 3 emissions. In the Proposals, it is indicated that Scope 3 emissions are material if there is a substantial likelihood that a reasonable investor would consider them important when making an investment or voting decision. The Proposal defines Scope 3 emissions as all indirect GHG emissions not otherwise included in a company's Scope 2 emissions, which occur in the upstream and downstream activities of a company's value chain. Disclosure would be made in absolute terms, excluding offsets, and in terms of intensity per unit of economic value. Scope 3 disclosure also includes a requirement to describe the data sources used to calculate these emissions. Smaller Reporting Companies (SRCs), as registered with the SEC, would be exempted from the Scope 3 reporting requirement.

SAFE HARBOR

The Proposal states that possible challenges to obtaining accurate Scope 3 emissions disclosure makes it appropriate to set out a specific safe harbor provision that would apply for Scope 3 emissions disclosure pursuant to the Private Securities Litigation Reform Act of 1995 (PSLRA), to the extent that the proposed climate-related disclosures constitute forward-looking statements. Under these provisions, disclosure of Scope 3 emissions would not be deemed a fraudulent statement unless it is proved that the disclosure was made or reaffirmed without a reasonable basis or was disclosed other than in good faith. It is important to note that PSLRA applies to private actions and would not limit the Commission's ability to bring enforcement actions.

FINANCIAL STATEMENT DISCLOSURE

The Proposed Rules would amend regulation S-X to require disclosure of impacts climate-related events or activities have on financial statements. Companies would be required to evaluate the potential financial impacts of severe weather events and other natural conditions, transition activities, and mitigation activities, and include a note to financial statements where evaluations show climate related-events or activities produce a one percent change to any single line item in the financial statements. Underlying estimates and assumptions used to determine any potential or known impacts on financial statements above the one percent threshold would be required to be disclosed. Consistent with all other information within financial statements, these disclosures would be subject to an independent audit.

PHASE-IN PERIOD

Compliance with the Proposed Rules would be phased in over time based on a company's filer status with the SEC. As outlined in Table A, disclosures would be phased in for all companies, with an additional phase-in period for Scope 3 emissions disclosure, where applicable.

TABLE A

Filer Type	Compliance Date	
	Proposed disclosures, except Scope 3 GHG emissions metrics	Scope 3 GHG emissions metrics
Large Accelerated Filer	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)
Accelerated Filer and Non-Accelerated Filer	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)
Smaller Reporting Company	Fiscal year 2025 (filed in 2026)	Exempted

ASSURANCE OF DISCLOSURE

The Proposals put forth different types of assurance requirements. First, disclosures made under Regulation S-X, in a note to companies' financial statements, would be subject to audit by an independent registered public accounting firm in accordance with applicable SEC rules and standards of the Public Company Accounting Oversight Board. Second, Scope 1 and 2 GHG emissions disclosure by companies that are registered as Accelerated and Large Accelerated Filers would be subject to limited assurance beginning with the second fiscal year of reporting, increasing to reasonable assurance beginning with the fourth fiscal year of reporting. SRCs are exempted from assurance requirements.

TABLE B

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

NEXT STEPS

The PRI encourages signatories to respond to the proposed rulemaking no later than the deadline of May 20, 2022.

The PRI will also submit a response to the consultation, which will be made available to PRI signatories. Further resources, including an informational webinar and a template comment for signatories to review can be found on PRI's website at www.unpri.org/secdisclosure.

Comments can be submitted electronically through the SEC's webform or via email at rule-comments@sec.gov with File Number S7-10-22 in the subject line.

Written correspondence should be sent to:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

File Number: S7-10-22

For questions or comments, email policy@unpri.org or contact Colleen Orr, Senior Policy Analyst, at colleen.orr@unpri.org.