

## SEC Adopts Sweeping New Climate Disclosure Requirements for Public Companies

### *An Overview of the Highlights and Key Differences to the Proposed Rules*

On March 6, 2024, the Securities and Exchange Commission (“SEC” or “Commission”), in a divided 3-2 vote along party lines, adopted final rules establishing climate-related disclosure requirements for U.S. public companies and foreign private issuers in their annual reports on Form 10-K and Form 20-F, as well as for companies looking to go public in their Securities Act registration statements. The Commission issued the [Proposing Release](#) in March 2022, which we previously summarized [here](#), and received more than 22,500 comments (including more than 4,500 unique letters) from a wide range of individuals and organizations. The Adopting Release is available [here](#) and a fact sheet from the SEC is available [here](#). A summary table discussing in more detail the notable changes between the Adopting Release and the Proposing Release is provided below.

**We will provide more resources.** Register [here](#) for Gibson Dunn's webcast covering key aspects of the final rules and litigation developments on Tuesday, March 12, 2024. Our review of the final rules and Adopting Release is ongoing. We will publish a revised and more detailed summary of the final rules and related topics.

**Overview of the final rules.** The final rules will require disclosure in annual reports and registration statements of:

- **Material impacts on operations.** How any climate-related risks have had, or are reasonably likely to have, material impacts on a company's results of operations, strategy, or financial condition.
- **Impact on the company.** How any such climate-related risks have materially affected or are reasonably likely to materially affect a company's outlook, strategy, and business model, as well as a new financial statement note reporting expenditures and costs above a de minimis threshold resulting from severe weather events, other “natural conditions,” and certain carbon offsets and renewable energy certificates (“REC”).
- **Risk management/oversight process.** Board and management governance and practices related to climate-related risk identification, assessment, management, and oversight.
- **GHG emissions and assurance.** Scope 1 and Scope 2 greenhouse gas (“GHG”) emissions, if material, for accelerated and large accelerated filers only, with phased-in assurance by an independent GHG emissions attestation provider.
- **Targets/goals.** Information regarding climate-related targets or goals that have materially affected, or are reasonably likely to materially affect, the company's results of operations, business, or financial condition.

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- **Mitigation efforts.** Transition plans to address material transition risks, scenario analyses used for assessing material climate-related risk impacts, and internal carbon pricing if its use is material to managing material climate-related risks.

**Significant changes from the rule proposal.** The Commission made several notable changes to the proposed requirements, including to:

- eliminate Scope 3 GHG emissions reporting requirements;
- limit the requirement to report Scope 1 and 2 GHG emissions only if material, and exempt non-accelerated filers, smaller reporting companies and emerging growth companies from emissions reporting;
- prolong the phase-in period for third-party assurance requirements for emissions reporting, and require only large accelerated filers to eventually (by 2033) obtain attestation at a “reasonable assurance” level;
- remove the requirement to disclose directors’ climate-related expertise;
- limit the Regulation S-X (“Reg. S-X”) financial footnote requirement to (1) expenditures, charges, and losses incurred as a result of severe weather events and other natural conditions that are 1% or more of either net income before tax and/or stockholders’ equity, depending on whether such amounts are expensed or capitalized, and (2) carbon offsets and renewable energy credits that are a material component of a company’s plan to achieve its disclosed climate-related targets or goals; and
- adopt a new requirement to disclose, outside of the financial statements, the amount of material expenditures incurred as a result of any transition plan.

More broadly, the final rules adopt “materiality” qualifiers for many of the disclosure requirements, and the number of prescriptive disclosure requirements has been reduced. The preamble to the final rules also states that “traditional” notions of “materiality” will apply, as defined in Supreme Court precedents. Notwithstanding these changes, the final rules impose a significant reporting burden on companies and require substantial planning to prepare to comply.

**Compliance phase-in period.** The final rules will become effective 60 days after publication in the Federal Register (available [here](#)). The requirement to comply with the final rules will phase in over time, based on a company’s filer status. Registration statements will be subject to these disclosure obligations based on the fiscal years being reported. The first required disclosures for U.S. public companies with a calendar-end fiscal year will begin with the annual report on Form 10-K filed in:

<b>Disclosure Requirement</b>	<b>Large Accelerated Filers</b>	<b>Accelerated Filers*</b>	<b>Non-Accelerated Filers / Smaller Reporting Companies / Emerging Growth Companies</b>
Reg. S-K & Reg. S-X requirements other than:	<u>2026</u> for FY 2025	<u>2027</u> for FY 2026	<u>2028</u> for FY 2027
Certain quantitative & qualitative disclosures under Items 1502(d)(2), 1502(e)(2), & 1504(c)(2)	<u>2027</u> for FY 2026	<u>2028</u> for FY 2027	<u>2029</u> for FY 2028
Scopes 1 & 2 GHG Emissions**	<u>2027</u> for FY 2026	<u>2029</u> for FY 2028	N/A
Limited Assurance of GHG Emissions	<u>2030</u> for FY 2029	<u>2032</u> for FY 2031	N/A
Reasonable Assurance of GHG Emissions	<u>2034</u> for FY 2033	N/A	N/A
Inline XBRL Tagging for Reg. S-K Requirements***	<u>2027</u> for FY 2026	<u>2027</u> for FY 2026	<u>2028</u> for FY 2027

\* This applies only to Accelerated Filers that are not also Smaller Reporting Companies or Emerging Growth Companies.

\*\* Scope 1 & 2 GHG emissions for the most recent fiscal year may be reported as late as the second quarter Form 10-Q deadline.

\*\*\* Reg. S-X requirements will be tagged with the first disclosure.

Disclosure Category	Proposing Release Standards	Adopting Release Changes
<p><b>Climate-Related Risk Oversight &amp; Management</b></p> <p><i>(Items 1501 &amp; 1503, Reg. S-K)</i></p>	<p>Describe climate-related risk oversight and management, including the role of the board in overseeing and management in assessing and managing climate-related risks, and related risk management processes.</p>	<p><b>Adopted substantially as proposed.</b></p> <p><u>Notable Changes:</u></p> <ul style="list-style-type: none"> <li>Removed several prescriptive disclosure requirements related to directors' climate-related expertise, board discussion and consideration of climate-related risks, board target setting, and board oversight of climate-related opportunities;</li> <li>added instruction providing examples of relevant management expertise to disclose; and</li> <li>focused on processes for identifying, assessing, and managing material climate-related risks.</li> </ul>
<p><b>Climate-Related Risks and Impacts</b></p> <p><i>(Item 1502, Reg. S-K)</i></p>	<p>Describe material climate-related risks, including:</p> <ul style="list-style-type: none"> <li>their impacts, timeframe, and nature, and how the company considers or incorporates them;</li> <li>the business strategy's resilience against changes in climate-related risks, including use of scenario analyses; and</li> <li>the company's transition plan(s) adopted for its management strategy for such risks, including relevant metrics, targets, and actions taken.</li> </ul>	<p><b>Adopted with significant revisions.</b></p> <p><u>Notable Changes:</u></p> <ul style="list-style-type: none"> <li>Removed requirement to discuss business strategy resilience against changes in climate-related risks;</li> <li>revised to focus only on transition plans adopted for managing material transition risks (rather than those adopted within the company's climate-related risk management strategy); scenario analyses used for assessing material climate-related risk impacts to the company (rather than as a tool used for assessing business resilience); and internal carbon pricing material to evaluating and managing climate-related risks</li> </ul>

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		<p>(rather than any maintenance of an internal carbon price); and</p> <ul style="list-style-type: none"> <li>removed requirement to discuss metrics and targets for the identification and management of transition and physical risks.</li> </ul>
<p><b>GHG Emissions Reporting Disclosures</b></p> <p><i>(Items 1504 &amp; 1505, Reg. S-K)</i></p>	<p>All companies must disclose Scope 1 and Scope 2 GHG emissions. All companies (except smaller reporting companies) must disclose Scope 3 GHG emissions if (i) material to the company or (ii) the company has set a GHG emissions target that includes Scope 3.</p> <p>Attestation is required for Scope 1 and Scope 2 for large accelerated and accelerated filers, subject to a phase in from limited assurance to reasonable assurance within two to four fiscal years after the compliance date. No attestation is required for Scope 3.</p>	<p><b>Adopted, with significant revisions, as Items 1505 &amp; 1506.</b></p> <p><u>Notable Changes:</u></p> <ul style="list-style-type: none"> <li>Eliminated Scope 3 GHG emissions disclosure requirements;</li> <li>limited Scope 1 and Scope 2 GHG emissions disclosure to large accelerated filers and accelerated filers, and only if material (e.g., to an investor’s voting or investment decision, or, if omitted, as significantly altering the total mix of information);</li> <li>delayed emissions reporting deadline for the most recent fiscal year to the second quarter Form 10-Q filing deadline (or 225 days after fiscal year end for Form 20-F or registration statement filers), instead of requiring inclusion in the annual report on Form 10-K (or Form 20-F);</li> <li>delayed “limited assurance” attestation requirement for Scope 1 and 2 GHG emissions until the third fiscal year after the compliance date; and</li> <li>limited requirement to transition to “reasonable assurance” attestation to large accelerated filers only, and</li> </ul>

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		extended phase-in to the seventh fiscal year after the compliance date.
<p><b>Targets, Goals &amp; Transition Plans Disclosures</b></p> <p><i>(Item 1506, Reg. S-K)</i></p>	<p>Describe GHG emission or other climate-related targets or goals, including pathway to achievement, progress made, and use of carbon offsets or RECs.</p>	<p><b>Adopted, with some revisions, as Item 1504.</b></p> <p><u>Notable Changes:</u></p> <ul style="list-style-type: none"> <li>Revised disclosure trigger to focus only on climate-related targets or goals that materially affect (or are reasonably likely to materially affect) the business, financial condition, or results of operations, rather than requiring disclosure whenever the company has set a GHG emissions reduction or other climate-related target or goal; and</li> <li>added disclosure requirements related to material impacts and expenditures from such targets or goals (or actions related thereto).</li> </ul>
<p><b>Climate-Related Financial Statement Disclosure</b></p> <p><i>(Rules 14-01 and 14-02 of Reg. S-X)</i></p>	<p>Disclose (i) climate-related financial metrics related to the impacts of severe weather events and activities to reduce GHG emissions or exposure to transition risks if the absolute value of those impacts or expenditures/costs, as applicable, represents at least 1% of its corresponding financial statement line item and (ii) the impact of climate-related events on estimates and assumptions.</p> <p>Disclosures must be provided for the company's most recently completed fiscal year and for each historical fiscal year included in</p>	<p><b>Adopted with significant revisions.</b></p> <p><u>Notable Changes:</u></p> <ul style="list-style-type: none"> <li>Replaced the requirement to disclose changes representing 1% of a line item with a new requirement to disclose aggregated cost and charges (and separately, recoveries) due to severe climate events and other natural conditions that exceed one percent of net income before tax or stockholders' equity, depending on whether such amounts are expensed or capitalized;</li> <li>replaced the requirement to disclose costs/expenditures for general</li> </ul>

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	the financial statements in the filing.	<p>transition activities and mitigating risks from climate-related events and conditions with a requirement to disclose whether any estimates/assumptions used in creating the consolidated financial statements had material impacts from climate-related targets or transition plans disclosed by the company (in addition to severe weather events or natural conditions); and</p> <ul style="list-style-type: none"> <li>• added requirement to disclose expensed or capitalized carbon offsets and RECs if material to a company’s transition plan.</li> </ul>

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Gibson, Dunn & Crutcher’s lawyers are available to assist in addressing any questions you may have about these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, or any of the following lawyers in the firm’s [Securities Regulation and Corporate Governance](#), [Environmental, Social and Governance \(ESG\)](#), [Capital Markets](#), [Administrative Law and Regulatory](#), and [Environmental Litigation and Mass Tort](#) practice groups:

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