

## SEC Adopts Climate-Related Disclosure Rules



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On March 6, 2024, the U.S. Securities and Exchange Commission (the “SEC”) finalized and adopted rules on climate-related disclosures for public companies, including foreign private issuers, that are less onerous than the original proposed rules published by the SEC two years ago, but which still impose significant new reporting obligations on public companies. As set forth in a 886-page [Release](#) and summarized by an accompanying [Fact Sheet](#), new subpart 1500 of Regulation S-K, *Climate-Related Disclosure*, and Article 14 of Regulation S-X will require public companies to provide both quantitative and qualitative disclosures relating to, among other items:

- Climate-related risks identified by the registrant that have had or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations or financial condition;
- The actual and potential material impacts of identified climate-related risks on the registrant’s strategy, business model and outlook;
- Measures the registrant has taken to mitigate or adapt to a material climate-related risk and the costs and impacts resulting from such activities;
- The role of the board of directors and management in overseeing, assessing and managing material climate-related risks;
- Any processes or measures the registrant has in place for identifying, assessing and managing climate-related risks and how those processes have been integrated into the registrant’s overall risk-management systems;
- Information about any climate-related targets or goals of the registrant, including the impacts of such targets or goals on the registrant’s financial estimates and assumptions;
- The capitalized costs, expenditures, charges and losses incurred as a result of severe weather events and other natural conditions, if applicable; and
- The capitalized costs, expenditures and losses incurred as a result of carbon offsets and renewable energy credits or certificates, if applicable.

Additionally, large accelerated filers and certain accelerated filers not otherwise exempted are required to disclose information about material Scope 1 and/or Scope 2 emissions, which includes data related to greenhouse gas (“GHG”) emissions. Registrants required to disclose such GHG emissions will also be required to file an assurance report (at a limited assurance level, and following a transitional phase-in period, at a reasonable assurance level).

The new disclosures must be included in registration statements and annual reports in both narrative and quantitative form, tagged in Inline XBRL. The disclosures will be required prospectively, meaning that information for prior periods will be required only to the extent such information was previously disclosed in an SEC filing, which may help facilitate the transition period.

While the new rules will require heightened climate-related disclosures in registration statements and annual reports, the final rules are scaled back from the SEC’s previously proposed rules issued in March 2022, which received 24,000 comments and were the subject of substantial scrutiny and public debate. Among the most notable differences in the adopted rules as compared to the proposed rules are the more narrow financial statement disclosures and the limited scope of and number of registrants subject to GHG emission disclosures. As pertains to financial statement disclosures, registrants will be required to disclose only certain climate-related financial statement effects, as opposed to those effects on all affected line items as initially proposed. Registrants will be required to make these disclosures in a footnote to the audited financial statements and will not be required to make an assessment as to whether any events or conditions disclosed are related to climate change, as was to be required by the proposed rules. Furthermore, the finalized rules have added a materiality qualifier in determining the climate-related targets or goals requiring disclosure. Additionally, in contrast to the SEC’s original proposal, the adopted rules include a materiality qualifier for Scope 1 and Scope 2 emissions and do not require registrants to disclose Scope 3 emissions. The final rules also provide a safe harbor for forward-looking climate-related disclosures, including disclosures regarding transition plans, scenario analysis, the use of an internal carbon price and the registrant’s targets and goals other than disclosures that are historical facts. Accordingly, the safe harbor does not extend to disclosures pertaining to the company’s actual Scope 1 and Scope 2 emissions or historical facts.

Notably, the rules were adopted in a 3-2 vote and SEC Commissioners Hester Peirce and Mark Uyeda expressed their views in opposition of the rule in dissenting statements, including Ms. Peirce who noted that the costs of the rule outweigh any benefits and suggested the Staff would be better served “re-proposing this rule not adopting it.”

Immediately following its adoption, a group of 10 states filed a petition with the U.S. Court of Appeals for the Eleventh Circuit arguing that the new rules are unlawful and requesting that the Court vacate the rules. Additionally litigation has since been commenced in the U.S. Court of Appeals for the Fifth, Sixth and Eighth Circuits. On the opposite end of the spectrum, environmental groups have challenged the newly adopted rules for not going far enough to promote climate change. In *Liberty Energy Inc. v. Securities and Exchange Commission*, based on arguments that the compliance costs of the rules would cause the petitioners to incur irreparable injury, the U.S. Court of Appeals for the Fifth Circuit granted the petitioners’ request seeking an administrative stay. On April 4, 2024, the SEC announced that it is voluntarily staying effectiveness of the Climate-Related Disclosure Rules pending the current legal challenges which, at the SEC’s request, were consolidated in the Eighth Circuit.

According to SEC Chair Gary Gensler, the new rules “will provide investors with consistent, comparable, and decision-useful information, and issuers with clear reporting requirements.” The final rules were scheduled to go into effect May 28th, at which point the compliance dates would have been phased in for all registrants depending on the registrant’s filer status as follows:

Registrant Type	Disclosure and Financial Statement Effects Audit <sup>1</sup>	GHG Emissions/Assurance		
		Scopes 1 and 2 GHG Emissions	Limited Assurance	Reasonable Assurance
Large Accelerated Filers	FYB 2025 <sup>2</sup>	FYB 2026	FYB 2029	FYB 2033
Accelerated Filers (other than SRCs and EGCs)	FYB 2026	FYB 2028	FYB 2031	N/A

SRCs, EGCs and Non-Accelerated Filers	FYB 2027	N/A	N/A	N/A
	<p>1 Other than certain disclosures relating to Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2), which will be required one year following the dates listed.</p> <p>2 As used in this chart, "FYB" refers to any fiscal year beginning in the calendar year listed.</p>			