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White Paper

June 30, 2022

Highlights

- **Key features of the SEC's economic analysis**
- **Graphical, step-by-step depictions of proposed climate disclosures**
- **Discussion of proposed financial statement metrics requirements**
- **Discussion of proposed governance and GHG emissions disclosure requirements**
- **Roadmap to the proposed attestation requirement**
- **Discussion of potential impact of the Supreme Court's opinion in *West Virginia v. EPA***

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Securities disclosure in the Anthropocene[1]: a guide to the SEC's climate risk proposal

By Mark S. Nelson, J.D.

Executive summary

The long-simmering interest of some SEC commissioners in adopting a comprehensive set of climate-related disclosure requirements emerged as a top priority when President Biden took office in January 2021 and set the federal government on a path toward a whole-of-government approach to reducing the effects of climate change. Although some of the more ambitious aspects of the Biden Administration's climate change plans have been put on hold due to the collapse of the Build Back Better Act, that delay has not stopped individual federal agencies like the SEC from pushing ahead with proposals to bring more transparency to the marketplace regarding the climate risks face by firms within their jurisdiction. In March 2022, somewhat later than had been expected, the SEC proposed a new set of climate-related disclosures that would lean heavily on existing third party standards and require substantially more detail from public companies than is currently voluntarily disclosed in many companies' corporate sustainability reports. These regulatory mandates would require financial statement disclosures under Regulation S-X and other, more extensive, disclosures under Regulation S-K. As proposed, the SEC's climate-related regulation would have a long on-ramp to full compliance and offer smaller reporting companies exemptions from some proposed disclosure requirements. The SEC's proposal, if ultimately adopted by the Commission, is likely to generate multiple legal challenges, one of which may focus on the Supreme Court's opinion in *West Virginia v. EPA*, in which the justices applied the major questions doctrine to limit the EPA's reach, and potentially by extension, to limit other federal agencies' ability to pursue climate regulations without clear Congressional authorization.

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1 "[T]he period of time during which human activities have had an environmental impact on the Earth regarded as constituting a distinct geological age." See, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/Anthropocene. More precisely, the Anthropocene has been proposed as a successor to the current Meghalayan Age of the Holocene Epoch and is thought to have begun with the global deposition of radioactive markers left behind by the era of atmospheric nuclear weapons testing conducted beginning in the 1950s in combination with the effects of industrialization. See http://quaternary.stratigraphy.org/working-groups/anthropocene/.

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Introduction

In prepared remarks at the SEC's open meeting to propose a climate risk disclosure framework under U.S. federal securities laws, Chair Gary Gensler emphasized that the Commission has for decades required at least some environmental and climate disclosures from public companies.[2] Most of the existing required disclosures are contained in Regulation S-K and pertain to regulatory matters, while another set of wider climate change-themed disclosures are made pursuant to guidance issued by the SEC in 2010.

Also at the open meeting to issue the climate proposal, one commissioner who voted in favor of the proposal appeared to question the wisdom of allowing a phased-in attestation regime for climate-related disclosures. That commissioner and one other commissioner who also voted for the proposal[3] reportedly told a business media outlet more recently that assurance should be required on a much more extensive basis for GHG emissions disclosures, including Scope 3 GHG emissions, instead of under the somewhat more limited approach taken by the proposal.[4] One commissioner (the Commission was missing one commissioner at the time) dissented[5] from the vote to issue the proposal.

The divisions among the commissioners over the climate proposal largely mirror those among, public companies, investors, and the general public regarding how public companies should account for the impact of climate change on their operations and profitability. In all likelihood, any final climate disclosure regulation adopted by the SEC will be the subject of one or more court challenges, the tenor of which may hinge on a key Supreme Court opinion expected to be issued by the end of June 2022.

Rather than rehash the history of how the SEC came to propose a comprehensive climate-related disclosure regime, this paper will instead focus on providing a user's guide to the proposed regulation that seeks to achieve two purposes: (1) explain what exactly the SEC has proposed while also exploring how public companies might comply with a final version of the proposed regulation; and (2) provide a framework to evaluate the thousands of public comments that are expected to be submitted on the SEC's proposed climate-related disclosure regulation.

Governance, protocols, and the economics of climate disclosure

In a nutshell, the SEC's climate risk proposal would require extensive corporate governance disclosures about the impact of climate change on reporting companies and disclosures about those companies' greenhouse gas (GHG) emissions metrics. The implementation of these disclosure requirements would be achieved over a period of years and with the aid of multiple safe harbors, phase-ins regarding levels of assurance for certain types of disclosures, and an exemption from some requirements for smaller reporting companies (SRCs). The details of these disclosures are contained in proposed amendments to the SEC's Regulations S-X and S-K.

This section briefly emphasizes the SEC's economic analysis of the proposed climate risk regulations in order to provide some context in

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2 Gary Gensler, Statement on Proposed Mandatory Climate Risk Disclosures, March 21, 2022 ("Our core bargain from the 1930s is that investors get to decide which risks to take, as long as public companies provide full and fair disclosure and are truthful in those disclosures. That principle applies equally to our environmental-related disclosures, which date back to the 1970s.").

3 Caroline A. Crenshaw, Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors, March 21, 2022 ("To that end, the proposed rule would, by improving the total mix of available data, empower investors to make more informed decisions. Additionally, with standardized disclosures, investors and their advisers can both track data over time and effectively compare data across companies and sectors. This proposal also offers needed modernization while providing flexibility to adapt to a constantly changing market.").

4 See, Andrew Ramonas, SEC Democrats Worry Climate Reporting Plan Falls Short on Audits, Bloomberg Law, June 13, 2022. See also, Allison Herren Lee, Shelter from the Storm: Helping Investors Navigate Climate Change Risk, March 21, 2022 (noting the difference between limited assurance—a form of "negative assurance"—versus reasonable assurance, which is an "affirmative attestation").

5 Hester M. Peirce, We are Not the Securities and Environment Commission - At Least Not Yet, March 21, 2022 ("The proposal, by contrast, tells corporate managers how regulators, doing the bidding of an array of non-investor stakeholders, expect them to run their companies." (footnote omitted)).

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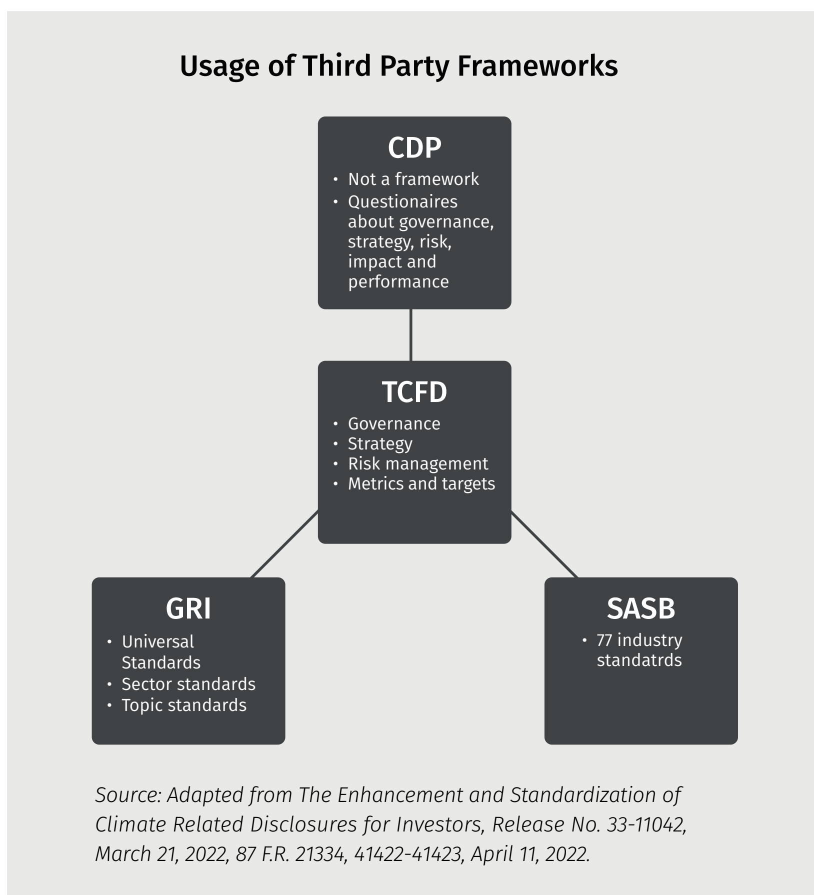
advance of the more detailed explanations of specific proposed rules below and in lieu of a more detailed history of the evolution of climate disclosure rules at the SEC. If one examines recent legislative proposals, it is possible to see the outlines of what the SEC ultimately proposed, but the SEC's proposal is far more detailed and makes more tradeoffs than would even the most detailed legislative proposals. Nevertheless, a key feature of the SEC's proposal is flexibility and, perhaps to a lesser extent, scalability based on company size. The overarching goal of achieving some degree of flexibility is evident in the standards and protocols referenced by the proposal, the proposal's cost-benefit analysis, and in the regulatory alternatives consider by the SEC.

Standards and protocols. The SEC's proposal elevates two external standard setters over all others: the Task Force on Climate-related Financial Disclosures (TCFD) and the Greenhouse Gas Protocol (GHG Protocol). Still, this emphasis is not exclusive because the SEC's proposal cites many other external standards and protocols, including some which the SEC may expect companies to at least mention or refer to in making their climate disclosures. According to the SEC, however, most of the standards and protocols cited in the proposal align with the TCFD, including standards published by the Sustainability Accounting Standards Board (SASB)[6], the Global Reporting Initiative (GRI), and the CDP (formerly the Carbon Disclosure Project).

With respect to disclosure standards, the SEC's proposing release appears to emphasize the TCFD standard in what might be described as a hub-and-spoke relationship, with the TCFD standard at the hub of the wheel and the CDP, GRI, and SASB standards arrayed around the outside of the wheel (the SEC mentions numerous other standards, but when discussing private sector data on who uses which standards, the results of those studies tend to focus on TCFD, CDP, GRI, and SASB). The proposing release makes one exception in the special case of GHG emissions disclosures, where the SEC relies heavily on the GHG Protocol.[7]

Standards cited by SEC proposal
Task Force on Climate-related Financial Disclosures (TCFD)
Greenhouse Gas Protocol
Sustainability Accounting Standards Board (SASB)
Global Reporting Initiative (GRI) (Universal, Sector, and Topic Standards)
CDP (formerly the Carbon Disclosure Project)
Climate Disclosure Standards Board (CDSB)
NAIC Climate Risk Disclosure Survey (insurance industry)
The Climate Pledge
Partnership for Carbon Accounting Financials' Global GHG Accounting & Reporting Standard (PCAF) (financial institutions)
ESG Data Convergence Project (private companies)
International Sustainability Standards Board (ISSB) (Press release, May 18, 2022 (discussing path toward global baseline and proposed climate standard); Press release, November 3, 2021 (announcing consolidation of standard setters under ISSB))

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.



Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, 41422-41423, April 11, 2022.

6 SASB is in the process of transitioning its standards to the IFRS Foundation where SASB's standards will become part of a future set of IFRS Sustainability Disclosure Standards.

7 The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, 41422-41423, April 11, 2022 (discussing third party frameworks).

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GHG emissions—preempting Supreme Court opinion? The SEC's proposal would impose climate disclosure requirements on most public companies, including the largest public companies but also a range of much smaller ones, formally defined as large accelerated filers and accelerated filers. Still, SRCs would be subject to most of the same requirements, albeit with some exemptions.

The proposal would require disclosures about GHG emissions. Here, the SEC acknowledged that the Environmental Protection Agency (EPA), through its U.S. EPA 2009 Mandatory Reporting of Greenhouse Gases Rule, already collects national data on GHG emissions. The SEC, however, said the EPA's data is difficult to disaggregate regarding the different "Scopes" of emissions (*i.e.*, Scopes 1, 2, and 3) and serves more as a national inventory of GHG emissions than a source of GHG emission data on particular companies.[8] As a result, the SEC said a separate set of disclosure rules under federal securities laws is needed to ensure that investors have sufficient information about public companies' climate-related risks, including GHG emissions.

This is one aspect of the SEC's proposal that is likely to be challenged in court should the SEC issue a final version of the regulation, especially now that the Supreme Court has applied the major questions doctrine to limit the reach of EPA's climate regulations. If the SEC adopts final climate-related disclosure regulations, the SEC would likely argue, among other things, that its regulations are within the scope of the traditional authorities conferred by its several organic statutes (*e.g.*, the Securities Act and the Exchange Act), that the EPA does not have exclusive jurisdiction over GHG emissions and that the SEC's climate-related regulations seek to achieve a different purpose than EPA regulations, and that the SEC's climate-related disclosure regime targets public companies' financial disclosures because of the potential impact climate-related disclosures can have on companies' liquidity and cost of capital.

Cost-benefit analysis. With respect to the SEC's cost-benefit analysis, the SEC restated the main premise for the proposal, one that Chair Gensler has repeatedly stated: investors want information about the climate-related impacts on public companies but current public company disclosures on this topic are often "inconsistent and incomplete."[9] The SEC also noted several issues that can arise with current voluntary climate disclosures, including costs, agency problems, misrepresentation or bias by managers, and the uncertainty companies face regarding how investors will react to or understand their voluntary disclosures.[10] According to the SEC, the benefits of a mostly mandatory climate disclosure regime include:

- Investors would gain access to more comparable, consistent, and reliable information about companies' climate risks.
- Disclosure can mitigate adverse selection problems (aka information asymmetries) by providing investors with more accurate and standardized information that can predict a company's future cash flows and, thus, lead to more accurate company valuations.
- Consistent, comparable, and reliable climate disclosures could aid companies by lowering capital costs, improving liquidity, and raising asset prices.[11]

As will be seen in the sections that follow, the SEC would achieve its objectives by requiring disclosures about a company's: (1) climate-related risks and the impact of those risks on its strategy; (2) governance of climate-related risks; (3) risk management practices regarding climate-related risks; (4) financial statement metrics; and (5) GHG emissions metrics.

The SEC provided two sets of numerical cost estimates, one stating the overall cost of compliance for different types of issuers, and the other stating the expected costs for the larger issuers to obtain assurance of data disclosed about their Scopes 1 and 2 GHG emissions:

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8 Id. at 21414.
9 Id. at 21425.
10 Id. at 21426-21427.
11 Id. at 21429-21431.

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Estimated General Costs				
Compliance time frame	**Type of issuer**	**Internal Costs**	**External Costs**	**Total Costs**
First year of compliance	Non-SRC Issuers	$180,000	$460,000	$640,000
	SRCs	$140,000	$350,000	$490,000
Compliance in later years	Non-SRC Issuers	$150,000	$380,000	$530,000
	SRCs	$120,000	$300,000	$420,000

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, 21439, April 11, 2022.

The SEC explained that the cost of compliance is the primary direct cost associated with the proposed climate regulations. The SEC also posited that companies that already voluntarily disclose some climate-related information and, thus, have some systems in place to collect and manage future mandatory disclosures, may experience incremental cost savings (although the SEC noted there also could be some new costs associated with compliance). The SEC further observed that compliance costs generally should decline over time.[12]

The requirement to obtain assurance of Scopes 1 and 2 GHG emissions would apply only to large accelerated filers and accelerated filers. Moreover, the level of assurance required would be phased-in beginning with limited assurance and eventually rising to reasonable assurance. The SEC provided estimates for obtaining assurance for large accelerated filers and accelerated filers.

Regulatory alternatives. In addition to considering efficiency, competition, and capital formation, the SEC's proposal reviewed 14 alternatives to the proposed regulations. For example, the SEC considered imposing climate-related disclosure requirements on only the largest companies but said this option could undermine the SEC's goal of bringing investors consistent, comparable, and reliable climate-related disclosures. Similarly, the SEC considered not requiring assurance for Scopes 1 and 2 GHG emissions and instead requiring disclosure only if assurance is obtained but said that option could result in less reliability and comparability in climate-related disclosures. The SEC declined to mandate scenario analysis because this field is still developing and the costs may be too high. The SEC also declined to require climate-related disclosures to be furnished instead of filed because, while companies might then face less

Costs of Scopes 1 and 2 Assurance				
Type of assurance	**Percent of total audit fees**	**5 percent**	**7.5 percent**	**10 percent**
Limited assurance	Accelerate filers	$30,000	$45,000	$60,000
	Large **accelerate filers**	$75,000	$110,000	$145,000
Reasonable assurance	Accelerate filers	$50,000	$75,000	$100,000
	Large accelerate filers	$115,000	$175,000	$235,000

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, 21442, April 11, 2022 (The SEC cited academic literature for the proposition that assurance costs for sustainability reports provide a useful starting point and that such costs may be arrayed along a continuum of percentages, i.e., minimum, median, and maximum percentages (5 percent, 7.5 percent, and 10 percent), which continuum the proposing release then used with some additional adjustments in reaching the estimated assurance costs for the proposed climate-related disclosure regulation).

12 Id. at 21439.

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potential liability under Securities Act Section 11 and Exchange Act Section 18, the resulting absence of liability risk could lead to a public perception that climate-related disclosures are less reliable and that could negatively impact companies' liquidity and capital costs.

By far the most discussed alternatives focused on Scope 3 GHG emissions disclosures. Here, the SEC considered the following:

- Eliminate the disclosure requirement for companies that set targets or goals—the SEC declined because this option could give investors an incomplete understanding of a company's risks and because of the possibility that companies could hide emissions by altering their supply chains.
- Exempting EGCs from Scope 3 requirements—The SEC suggested that doing so could result in a requirement that is under- or over-inclusive depending on the degree of overlap between EGCs and SRCs and the exemption for SRCs.
- Eliminate the Scope 3 exemption for SRCs—The SEC said this option would have costs and the benefit to investors would be small.
- Eliminate the Scope 3 safe harbor—According to the SEC, exposing companies to liability risk for Scope 3 GHG emissions disclosures could improve disclosures, but there would nevertheless be persistent issues with measurement that would justify the safe harbor.[13]

Proposed compliance dates. The Commission's proposed climate-related disclosure regime would not come into existence all at once in the event that the Commission moves forward with plans to issue a final climate-related regulation. Instead, because of the complexity of the required disclosures and the still-evolving nature of the external standards applicable to climate-related disclosures, the proposing release would provide multiple exemptions for some companies and a complex, lengthy set of phase-ins. Below are some of the key dates anticipated by the proposing release.

This preview of the SEC's proposed climate-related disclosure regime, as viewed through the lens of the agency's economic analysis, sets the stage for a closer examination of the precise disclosure requirements that would be mandated under the proposed regulations. This larger discussion will first emphasize the financial statement metrics to be disclosed under Regulation S-X. Next, the discussion will turn to a review of the much larger set of disclosures that would be required under Regulation S-K.

Registrant Type	Disclosure Compliance Date	
	All proposed disclosures, including GHG emissions metrics: Scope 1, Scope 2, and associated intensity metric, but excluding Scope 3.	GHG emissions metrics: Scope 3 and associated intensity metric.
Large Accelerated Filer	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)
Accelerated/Non-Accelerated Filer	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)
SRC	Fiscal year 2025 (filed in 2026)	Exempted

Source: Adapted from FACT SHEET Enhancement and Standardization of Climate-Related Disclosures, March 21, 2022.

Filer Type	Scopes 1 and 2 GHG 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)

Source: FACT SHEET Enhancement and Standardization of Climate-Related Disclosures, March 21, 2022.

13 Id. at 21448-21452.

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Financial statements and climate-related metrics

Proposed Rule 14-01 of Regulation S-X would require a company to include in a note to its financial statements disclosures about climate-related metrics required by Rule 14-02 in any filing that would require inclusion of climate-related disclosures under proposed Subpart 1500 of Regulation S-K and for which audited financial statements are required. A company's financial statement disclosures would focus on three climate-related topics: (1) metrics about financial impacts; (2) metrics about expenditures; and (3) information about any estimates and assumptions used to produce the company's consolidated financial statements.

Moreover, Proposed Rules 14-01 and 14-02 consistently use several terms in multiple contexts. For one, when the rules speak of negative and positive impacts of climate-related events, those impacts must be disclosed, at a minimum, on an aggregated line-by-line basis (*e.g.*, Rules 14-02(c) and (d)). Second, the phrase "severe weather events and other natural conditions" refers to the impact of flooding, drought, wildfires, extreme temperatures, and sea level rise on any relevant line items in the registrant's consolidated financial statements during the fiscal years presented (*e.g.*, Rules 14-02(c), (e), (g), and (j)). The several impacts are couched in language ("such as") that implies they are examples and likely not intended to be an exhaustive list of potential impacts. Lastly, Rule 14-01(b) would provide that the definitions set forth in proposed Item 1500 of Regulation S-K apply to proposed Article 14 of Regulation S-X; proposed Article 14 explicitly references the terms "climate-related opportunities" (*e.g.*, Rule 14-02(j)), "climate-related risks" (*e.g.*, Rule 14-02(i)), "GHG emissions" (Rules 14-02(d) and (f)), while Rule 14-02 refers to "supply chains," which may overlap with the formal definition of "value chain." Similarly, several subsections of Rule 14-02 would refer to the phrases "transition activities" and "transition risks," which may overlap with the formal definition of "transition plan."

Contextual information. Proposed Rule 14-02(a) would require a company to provide contextual information about its climate-related metrics. Specifically, a company must describe: (1) how each specified metric was derived; (2) significant inputs and assumptions used; and (3) policy decisions made to calculate specified metrics, if applicable.

When disclosure is required. Proposed Rule 14-02(b)(1) would establish several disclosure thresholds. First, the rule sets a 1 percent disclosure threshold for the financial impact on a line item in a company's financial statements regarding severe weather events and other natural conditions, transition activities, identified climate-related risks, and climate-related opportunities. As a result, disclosure of the financial impacts on these matters would not be required if the sum of the absolute values of all the impacts on the line item is less than one percent of the total line item for the relevant fiscal year. By implication, disclosure would be required if the sum of the absolute values of all the impacts on the line item is equal to or greater than 1 percent of the total line item for the relevant fiscal year. The key task for a company will be to explain how it calculated its financial impacts under proposed Rule 14-02(a).

It should be noted that absolute value is a measure of the distance a number is from zero, so a number can be either negative or positive by itself, but the absolute value of that number must be either zero or a positive number, so the absolute value of each financial impact measured must be either zero or a positive number. To obtain the percentage, divide the sum of the absolute values of the impacts to the line item into the amount of the corresponding line item and shift the decimal two places to the right; repeat this process for each line item.

Concept: Impact disclosure threshold
$\lvert Impact_1 \rvert + \lvert Impact_2 \rvert + \lvert Impact_3 \rvert < 1\%$ of line item for FY = Disclosure not required.
$\lvert Impact_1 \rvert + \lvert Impact_2 \rvert + \lvert Impact_3 \rvert \geq 1\%$ of line item for FY = Disclosure required.

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

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The proposing release provided an example of how to make this calculation:

Example: Calculating impact disclosure threshold for a line item						
F/S line-item	F/S balance (from consolidated financial statements)	Impact of events A and B	Impact of event C	Impact of transition activity D	Sum of absolute values of all impacts	Percentage impact
Cost of revenue	$10,000,000	-$300,000	+$70,000	+$90,000	$460,000	4.6%

Source: The above example is a modified version of the example provided by the Commission. There is a semantic difference between the text of Proposed Rule 14-02(b)(1) of Regulation S-X and the SEC's example; in the former, the Commission used the phrase "sum of the absolute values of all the impacts" and in the latter the Commission used the phrase "Absolute value of impacts." See, The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, 21367, April 11, 2022.

Second, proposed Rule 14-02(b)(2) likewise sets a 1 percent disclosure threshold for disclosing the aggregate amount of expenditure expensed or the aggregate amount of capitalized costs incurred regarding expenditures to mitigate risks of severe weather events and other natural conditions, expenditures related to transition activities, and any impacts related to identified climate-related risks and climate-related opportunities. As a result, disclosure would not be required if the amount is less than 1 percent of the total expenditure expensed or total capitalized costs incurred, respectively, for the relevant fiscal year. Once again, by implication, disclosure would be required if the amount is equal to or greater than 1 percent of the total expenditure expensed or total capitalized costs incurred, respectively, for the relevant fiscal year.

Severe weather and transition activities. The following two graphics summarize the proposed required disclosures regarding: (1) severe weather events and other natural conditions and (2) transition activities.

Severe weather events and other natural conditions			
Topic	**Rule 14-02(c)**	**Rule 14-02(e)**	**Rule 14-02(g)**
What to disclose.	Impact of severe weather events and other natural conditions on any relevant line items in the consolidated financial statements during the fiscal years presented.	Disclose separately the aggregate amount of expenditure expensed 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.	Whether the estimates and assumptions the registrant 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.
Sample events.	Flooding, drought, wildfires, extreme temperatures, and sea level rise.	Flooding, drought, wildfires, extreme temperatures, and sea level rise.	Flooding, drought, wildfires, extreme temperatures, and sea level rise.
How to disclose.	Separately disclose negative and positive impacts, at a minimum, on an aggregated line-by-line basis.		If the question about what to disclose is answered "Yes," provide a qualitative description of how the development of such estimates and assumptions were impacted by such events.
Sample impacts/ expenditure examples.	• Changes to revenues or costs from disruptions to business operations or supply chains. • Impairment charges and changes to the carrying amount of assets due to the assets being exposed to severe weather events. • Changes to loss contingencies or reserves (such as environmental reserves or loan loss allowances) due to impact from severe weather events. • Changes to total expected insured losses due to flooding or wildfire patterns.	Amount of expense or capitalized costs, as applicable, to: • Increase the resilience of assets or operations; • Retire or shorten the estimated useful lives of impacted assets; • Relocate assets or operations at risk; or • Otherwise reduce the future impact of severe weather events and other natural conditions on business operations.	

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

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Transition activities			
Topic	**Rule 14-02(d)**	**Rule 14-02(f)**	**Rule 14-02(h)**
What to disclose.	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 during the fiscal years presented.	Disclose separately the aggregate amount of expenditure expensed and the aggregate amount of capitalized costs incurred during the fiscal years presented to reduce GHG emissions or otherwise mitigate exposure to transition risks. Also, if the company has disclosed GHG emissions reduction targets or other climate-related commitments, disclose the expenditures and costs related to meeting its targets, commitments, and goals (if any) in the fiscal years presented.	Whether the estimates and assumptions 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.
How to disclose.	Separately disclose negative and positive impacts, at a minimum, on an aggregated line-by-line basis.		If the question about what to disclose is answered "Yes," provide a qualitative description of how the development of such estimates and assumptions was impacted by such a potential transition or the registrant's disclosed climate-related targets.
Sample impacts/ expenditure examples.	• Changes to revenue or cost due to new emissions pricing or regulations resulting in the loss of a sales contract. • Changes to operating, investing, or financing cash flow from changes in upstream costs (e.g., transportation of raw materials). • Changes to the carrying amount of assets due to a reduction of the asset's useful life or a change in the asset's salvage value by being exposed to transition activities. • 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.	Amount of expense or capitalized costs, as applicable, related to: • Research and development of new technologies; • Purchase of assets, infrastructure, or products that are intended to reduce GHG emissions, increase energy efficiency, offset emissions (purchase of energy credits); or • Improve other resource efficiency.	

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

Additional disclosures. A company also would be required to make disclosures in its financial statements about the impact of identified climate-related risks. Moreover, a company would have the option of making disclosures about the impact of climate-related opportunities.

With respect to impact of climate-related risks, proposed Rule 14-02(i) of Regulation S-X would require a company to include the physical risks and transition risks that the company identified in its disclosure under Item 1502(a) of Regulation S-K. The impact to be disclosed under Regulation S-X would be the impact on financial metrics disclosures made regarding (1) severe weather events and other natural conditions and (2) transition activities under Rules 14-02(c) through 14-02(h) of Regulation S-X.

Under Rule 14-02(j), a company also may 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. This disclosure may include climate-related opportunities the company identified under Item 1502(a) of Regulation S-K. Once again, the impact to be disclosed under Regulation S-X would be the impact on financial metrics disclosures made regarding (1) severe weather events and other natural conditions and (2) transition activities under Rules 14-02(c) through 14-02(h) of Regulation S-X. The proposed rule also provides that if a registrant makes a policy decision to disclose the impact of

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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.

Calculations, accounting principles, periods covered. Proposed Rule 14-01 of Regulation S-X, in addition to stating the general requirement that a company include in a note to its financial statements disclosures about climate-related metrics required by Rule 14-02, would require companies to provide information regarding the basis for required calculations, applicable accounting principles, and the historical periods that companies must cover in their climate-related disclosures.

First, with respect to calculations, Rule 14-01(c) would require a company to use financial information that is consistent with the scope of the remainder of its consolidated financial statements included in the filing. The release explained that a company would include in any calculation information about its consolidated subsidiaries.[14] Moreover, whenever applicable, a company would apply the same accounting principles as required for the remainder of its consolidated financial statements included in the filing.

Second, proposed Rule 14-01(d) would require a company to include disclosures for specified historical periods. As a result, a company would include:

- Its most recently completed fiscal year.
- The historical fiscal years included in its consolidated financial statements in the filing.

The release also noted that the historical years included will vary depending on whether the company is an emerging growth company (EGC) or smaller reporting company (SRC). An EGC is a company that, among other things, has total annual gross revenues of less than $1,000,000,000 (the Commission adjusts this amount for inflation every 5 years; the amount is currently set at $1.07 billion).[15] An SRC is a company that is not an investment company, ABS issuer, or majority owned subsidiary of a company that is not an SRC, and which has public float less than $250 million or annual revenues less than $100 million and either no public float or public float less than $700 million.[16] Both EGCs and SRCs would need to provide only two years of financial statements.[17]

Regulation S-K: climate-related disclosures

The bulk of the SEC's proposed climate-related disclosure framework would be located in a new Article 15 within Regulation S-K and can be thought of as being composed of three main parts: (1) governance provisions, including the general climate-related disclosure obligation; (2) GHG emissions disclosures; and (3) interactive data requirements. However, because there are so many detailed requirements for each of the several proposed Items within Regulation S-K, this paper will examine each of these Items in isolation; the proposed Item that contains definitions applicable across Regulations S-X and S-K will not be treated separately and its contents instead will be discussed as needed with respect to the other proposed Items. Thus, even though the approach will be to discuss each Item separately, the following groupings of Items is suggested by the SEC's proposal:

Organization of Subpart 229.1500—Climate-Related Disclosure	
Governance matters	• Item 1501 Governance. • Item 1502 Strategy, business model, and outlook. • Item 1503 Risk management.
GHG emissions	• Item 1504 GHG emissions metrics. • Item 1505 Attestation of Scope 1 and Scope 2 emissions disclosure. • Item 1506 Targets and goals.
Technical filing requirements	• Item 1507 Interactive data requirement.

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

14 Id. at 21364.
15 See Securities Act Rule 405. See also, Inflation Adjustments and Other Technical Amendments Under Titles I and III of the Jobs Act, Release No. 33–10332, March 31, 2017, 82 FR 17545, April 12, 2017.
16 See Securities Act Rule 405.
17 See Regulation S-X Rules 3-02(a) and 8-02, respectively.

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Item 1501: corporate governance. Proposed Item 1501 of Regulation S-K would require disclosures about how a company's board of directors and managers view climate-related risks in the context of the company's business strategy. The required disclosures fall into three categories in which some disclosures are common to the board and managers and some are unique to the board or managers:

—Directors and managers. A company must disclose: (1) its board members (or committee(s)) and managers who are responsible for oversight or assessment, respectively, of climate-related risks; (2) whether board members or managers have expertise in climate-related disclosures; (3) the process by which the board and managers are informed about or monitor climate-related risks; and (4) if applicable, the board's oversight of, and management's role in assessing and managing, climate-related opportunities.

—Directors. For directors, the proposed Item would require two additional disclosures: (1) whether and how the board considers climate-related risks as part of business strategy, risk management, and financial oversight; and (2) whether and how the board sets climate-related targets/goals, and how the board oversees progress towards those targets/goals (the disclosure would include any interim targets/goals).

—Managers. A company would have to disclose how often its managers report to the board regarding climate-related risks.

The release itself mostly rehashes what the proposed Item would require. However, it is noteworthy that, despite some pre-public comments calling for disclosure of how a company ties executive compensation to meeting climate-related targets/goals, the proposed Item would not require such disclosure. The Commission reasoned that existing disclosures via the Compensation Discussion and Analysis (CD&A) provide sufficient space to discuss any ties between executive compensation and climate-related targets/goals.[18]

Item 1502: general disclosure requirement. Proposed Item 1502(a) of Regulation S-K states a general disclosure requirement for material climate-related risks. A company subject to the regulation would have to identify material risks and state the time horizon(s) over which those risks may occur. An item would be considered "material" if, as stated by the Supreme Court in *Basic* and *Northway*, "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." The proposal emphasizes that materiality is fact-specific and looks to both qualitative and quantitative factors. Moreover, in the case of potential future events, a company must consider the probability that an event will occur and the potential magnitude or significance of that event to the company.[19]

The proposing release noted that any forward-looking statements would be subject to the safe harbor contained in the Private Securities Litigation Reform Act of 1995 (PSLRA). However, the release also cautioned that the PSLRA safe harbor does not apply to initial public offerings (IPOs) and does not impact SEC enforcement.[20]

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18 The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33–11042, March 21, 2022, 87 F.R. 21334, 21360, April 11, 2022.
19 Id. at 21351.
20 Id. at 21352.

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General Climate-Related Disclosure Obligation				
Type of disclosure	**What must be disclosed?**			
Mandatory	Material climate-related risks	Physical risks (label each risk as acute or chronic)	1. Nature of risk. 2. Location and nature of the properties, processes, or operations at risk.	1. For risks in flood hazard areas, disclose: (a) location of asset(s); and (b) percent of assets affected. 2. For assets in high/extremely high water stress regions, disclose: (a) location of asset(s); (b) book value and percent of total assets in such region; and (c) company's total use of water from region.
		Transition risks	1. Nature of the risk (i.e., regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), liability, reputational, or other transition-related factors). 2. How the above factors impact the company.	
		Time horizons	1. How defined by company (*i.e.*, short-, medium-, and .long-term). 2. How account/reassesses expected useful life of assets and time horizons for climate-related planning processes and goals	
Discretionary	Impacts of climate-related opportunities			

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

The proposal raises a number of questions for public comment regarding Item 1502(a).[21] Among these questions, a few stand out:

- Should companies be required to discuss how acute and chronic climate-related risks affect each other?
- Would the use of postal zip codes to describe locations of assets pose competitive or physical security concerns?
- Should the Commission further define terms like "flood hazard area" or "wildfire risk" (although not mentioned as a topic for further public comment, presumably "sea level rise" also might require further definition).
- With respect to voluntary disclosure of climate-related opportunities, could such disclosures result in greenwashing? How should this result be addressed?

—Item 1502(b): time horizons. Proposed Item 1502(b) would look to the time horizons of particular climate-related risks. As a result, a company would have to describe the actual and potential impacts of any climate-related risks identified per proposed Item 1502(a) on the registrant's strategy, business model, and outlook. A company would have flexibility to define time horizons (*i.e.*, short-, medium-, long-term) appropriate to its circumstances and, thus, the Commission did not prescribe a range of years to describe short-, medium-, and long-term.[22]

21 Id. at 21352-21353.
22 Id. at 21351.

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Time Horizons			
Impacts to be disclosed	**Short-term**	**Medium-term**	**Long-term**
Business operations (types and locations)			
Products or services			
Suppliers and other parties in its value chain			
Activities to mitigate/adapt to climate-related risks (e.g., new technologies or processes)			
Expenditures for research and development			
Other significant changes or impacts			

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

—Item 1502(c): carbon offsets and RECs. Proposed Item 1502(c) would require a company to discuss whether and how any impacts described per Item 1502(b) are considered as part of the company's business strategy, financial planning, and capital allocation. This would entail several specific types of disclosure:

- Current and forward-looking disclosures of whether the implications of identified risks have been integrated into the company's business model or strategy (the disclosure would include a discussion of how any resources are being used to mitigate climate-related risks).
- A discussion of how any metrics referenced in Rule 14-02 of Regulation S-X and Items 1504 and 1506 of Regulation S-K (GHG metrics and targets/goals, respectively) relate to the registrant's business model or business strategy.
- A discussion (if applicable) of the role that carbon offsets or renewable energy credit or certificate (RECs) play in the registrant's climate-related business strategy (See the side bar below for more details about carbon offsets and RECs).

The release suggested the example of a company that operates in a jurisdiction that imposes GHG goals pursuant to the Paris Agreement; in the example, the company would disclose transition risks associated with its related short-, medium-, and long-term net zero GHG emissions targets. The release also noted that some disclosures (e.g., reduction of Scopes 1 and 2 GHG emissions) may be similar across industries, while some industries may face different or varied risks (the release cited examples of disclosures for oil companies, agricultural producers and distributors, mining companies, real estate companies, and auto companies).[23]

With respect to carbon offsets and RECs, the release noted that companies generally take two approaches: (1) use carbon offsets and RECs as the primary means to meet GHG reductions goals; or (2) seek to reduce GHG emissions via operational changes made under guidelines issued by a standard setter such as the Science Based Targets Initiative and then use carbon offsets and RECs to further reduce GHG emissions that are not reduced via operational changes. The release also suggested that the short- and long-term consequences of using carbon offsets and RECs may be an important factor because of the potential for changes in the legality, availability, and market prices of carbon offsets and RECs. As a result, a company may need to discuss additional short and long-term costs and risks regarding carbon offsets and RECs in its Item 1502 disclosure.[24]

23 Id. at 21354.
24 Id. at 21355.

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A mini primer on carbon offsets and RECs

The release discusses offsets and RECs in multiple contexts, but the proposed climate regulation would define these terms mostly in line with EPA guidance. The main thing to know about carbon offsets and RECs is that they are used for different purposes and are measured using different metrics. As a result, the release would define "renewable energy credit or certificate" (REC) to mean a credit or certificate representing each megawatt-hour (1 MWh or 1,000 kilowatt-hours) of renewable electricity generated and delivered to a power grid. "Carbon offsets" would be defined to mean an emissions reduction or removal of greenhouse gases in a manner calculated and traced for the purpose of offsetting an entity's GHG emissions.

According to EPA guidance, offsets are measured in terms of metric tons of CO_2e and represent verified emissions reductions beyond a "business-as-usual scenario" for a company (*i.e.*, there is an "additionality" requirement). Offsets can be derived from a variety of underlying projects, although as the SEC's proposing release noted, offsets are subject to market forces in terms of their pricing; moreover, the failure of an underlying project can undermine an offset (*e.g.*, "the offset represents protected forest land that burns in a wildfire and no longer represents a reduction in GHG emissions"). Offsets can be used to mitigate Scopes 1, 2, and 3 emissions. RECs, by contrast, are measured in terms of 1 MWh of renewable electricity from low- or zero-carbon emissions sources and can expand the electricity service choices available to consumers. RECs apply to Scope 2 purchased electricity only and they do not have an "additionality" requirement.[25]

See the section below regarding proposed Item 1506 for a discussion of offsets and RECs in the context of disclosing GHG emissions reductions targets and goals.

—Item 1502(d): narrative disclosure. Proposed Item 1502(d) requires a company to provide a narrative discussion of whether and how any climate-related risks identified per Item 1502(a) have affected or are reasonably likely to affect the registrant's consolidated financial statements. The disclosure should include any metrics disclosed under proposed Rule 14-02 of Regulation S-X that demonstrate how risks identified under Item 1502(a) have had a material impact on reported financial condition or operations. The release states that the narrative disclosure called for by Item 1502(d) is intended to resemble the type of disclosure that otherwise would be provided in a company's MD&A and that the required climate-related disclosure may be provided in the MD&A.[26]

—Item 1502(e): internal carbon price. Carbon pricing can be challenging for many reasons but the Commission's climate risk proposal includes a disclosure requirement for this topic. A company that uses multiple internal carbon prices would have to provide disclosures for each internal carbon price and disclose its reasons for using different prices.[27] Specifically, a company would have to disclose the:

- Price per metric ton of carbon dioxide equivalent (CO_2e);
- Total price, including how the total price is estimated to change over time (if applicable);
- Boundaries for measurement of overall CO_2e on which the total price is based if they are different from the GHG emission organizational boundary required under Item 1504(e)(2); and
- Rationale for selecting the internal carbon price applied.

The release describes internal carbon price as an estimated cost of carbon emissions used internally within an organization. Several other definitions play a role in the disclosure of internal carbon price. For example, CO_2e is a unit of measurement that indicates the global warming potential (GWP) of each greenhouse gas, expressed in terms of the GWP of one unit of carbon dioxide (CO_2). GWP is a measure of how much energy will be absorbed in the atmosphere over a specified period of time as a result of the emission of one ton of a greenhouse gas, relative to the emissions of one ton of carbon dioxide (CO_2).

According to the release, disclosure of a company's internal carbon price can be used as a planning tool, incentivize cost reductions through energy efficiency, and provide quantification of the impact of a carbon price. However, a company

25 Id. at 21355 (See same at n. 237 for SEC discussion of EPA guidance). See also, EPA, Offsets and RECs: What's the Difference?, https://www.epa.gov/sites/default/files/2018-03/documents/gpp_guide_recs_offsets.pdf.

26 Id. at 21354.

27 Id. at 21356.

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need only make the disclosure if it maintains an internal carbon price; a company that does not maintain an internal carbon price would not have to make the disclosure. Moreover, the SEC would not require a company making such disclosure to use a particular carbon pricing methodology.[28] The Commission explained in the release that disclosure of internal carbon pricing is material because it may help investors to determine if the company's internal understanding of its carbon pricing is "reasonable" and whether the company's climate-related planning is "sound." The release further explained that internal carbon pricing is not a "promise or guarantee" of a company's future costs for GHG emissions.

Finally, the PSLRA's safe harbor would apply to any statements about internal carbon pricing that are forward-looking.[29] The SEC also sought public comment on whether there should be a separate safe harbor for internal carbon pricing.[30]

—Item 1502(f): business strategy resilience. Proposed Item 1502(f) would require a company to describe the resilience of its business strategy in light of potential future changes in climate-related risks. The Item also would call for a description of any analytical tools used by the company in making the above assessment. For example, if a company used scenario analysis, it would need to disclose both qualitative and quantifiable information about:

- The scenarios considered (e.g., various projections for temperature rise); and
- The parameters, assumptions, analytical choices, and projected principal financial impacts on its business strategy under each scenario.

"Scenario analysis" would be defined to "mean[] 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." The pre-public comments cited in the proposing release suggest the example of temperature rise following one of three paths: (1) a "smooth economic transition;" (2) a "disorderly transition;" or (3) a "higher temperature scenario outcome." Both the definition of "scenario analysis" and Item 1502(f) would assign the following temperature values to these scenarios: +1.5 °C , +2.0 °C , and +3.0 °C above pre-industrial levels.[31]

The proposing release states that the Commission would not mandate scenario analysis. That means companies that use scenario analysis in their business strategy would have to disclose how they use it, but other companies not using such analysis could avoid having to expend large sums to produce analysis they are not currently producing or are ill-suited to produce. For companies that do use scenario analysis, the release suggested trying multiple scenarios, including one focused on the "disorderly" scenario suggested by public comments.[32]

With respect to the standards to be used in conducting scenario analysis, the release suggested adhering to the TCFD's physical risk/transition risk framework or using "scientifically based, widely accepted scenarios," including those promulgated by: (1) The IPCC; (2) the International Energy Agency (IEA); or (3) the Network of Central Banks and Supervisors for Greening the Financial System (NGFS).[33]

The release also noted that scenario analysis is forward-looking in nature and that much of such analyses would be covered by the PSLRA safe harbor.[34]

Lastly, the release posed numerous questions for further public comment, including whether disclosure of internal carbon pricing would raise competitive risks that could discourage the maintenance of an internal carbon price. Another question asked if there should be a separate safe harbor for scenario analyses.[35]

Item 1503: risk management. Proposed Item 1503 of Regulation S-K would require disclosure about the processes a company uses to assess climate-related risks and about its transition planning. A company also may describe any processes for identifying, assessing, and managing

28 Id. at 21356.
29 Id. at 21356.
30 Id. at 21358.
31 Id. at 21356.
32 Id. at 21357.
33 Id. at 21357.
34 Id. at 21357.
35 Id. at 21359.

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climate-related opportunities. There would be a general disclosure requirement for how any processes identified by a company are integrated into its overall risk management systems and processes, including a statement about how the company's board or management committee interacts with the board or management committee on governing risks. However, the bulk of the disclosures required would focus on the processes themselves and transition planning.

Perhaps with a nod to expected future legal challenges to any Commission-adopted climate-related disclosure regulation, and consistent with Chair Gensler's public statements about environmental issues already being a part of SEC disclosure for many years, the proposing release notes that risk disclosure more generally is a "long-standing disclosure concept" in SEC regulations. A footnote to the release observed that risk factor disclosures have been part of Securities Act disclosures since 1982 and they have been part of Exchange Act disclosure since 2005.[36] A likely legal challenge to the proposed climate-related risk regulation, assuming it is ultimately adopted, would be that climate-related risk disclosures go beyond the SEC's more traditional jurisdiction over financial disclosures.

—Identifying, assessing, and managing climate-related risks. With respect to any process to identify, assess, and manage climate-related risks, a company would need to describe:

- How it determines the relative significance of climate-related risks versus other risks;
- How it considers existing or likely regulatory implications of climate-related risks (*e.g.*, GHG emissions limits);
- How it considers shifts in customer/counterparty preferences, technological changes, and market pricing changes regarding potential transition risks; and
- How it determines the materiality of climate-related risks (*e.g.*, the scope and impact of risks disclosed per Item 1502).

A company's disclosures about processes for managing climate-related risks also would need to discuss certain aspects of its efforts to address those risks. As a result, a company would need to further disclose how it: (1) decides whether to mitigate, accept, or adapt to particular climate-related risks; (2) prioritizes whether to address climate-related risks; and (3) determines how to mitigate high priority climate-related risks.

These disclosures, according to the release, may require a company to disclose its use of insurance/financial products to manage climate-related risks. Moreover, the release explained that the degree of integration of climate-related risk into a company's overall risk management systems and processes could help investors grasp how "centralized" climate-related risk management is at the company and how the company's board and management may respond to "unfold[ing]" climate-related risks.[37]

—Transition planning. A company that adopts a transition plan for climate-related risks would need to describe the plan, including metrics and targets used to manage physical and transition risks. Disclosures related to the plan would need to be updated each fiscal year to describe actions taken to achieve plan targets/goals. Moreover, the company would have to describe its plans to mitigate or adapt to any identified transition risks. But a company would have the option to describe how it plans to achieve climate-related opportunities.

The proposed regulation would define "transition plan" to mean a "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." The proposed Item contains numerous examples of transition risks. The release noted that transition planning activities tend to be forward-looking and, thus, the PSLRA safe harbor would apply to transition plans.[38]

Item 1504: GHG emissions metrics. Proposed Item 1504 of Regulation S-K would require a series of disclosures about GHG emissions metrics, including a generalized disclosure that provides aggregated and disaggregated data, separate calculations of Scopes 1 and 2 emissions (including

36 Id. at 21361 (see also, same at n. 290).
37 Id. at 21361.
38 Id. at 21362.

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GHG intensity) and of Scope 3 emissions (including a liability exemption), and the methodology used to calculate GHG emissions. It appears that most of the data needed to satisfy the proposed disclosure requirement could be tracked via a chart suggested by proposed Item 1504(a):

Aggregated and Disaggregated GHG Emissions Data				
GHG Emissions[39]	**Scope 1**	**Scope 2**	**Scope 3**	**Totals**
Carbon dioxide (CO_2)	In terms of CO_2e[40]			
Methane (CH_4)				
Nitrous oxide (N_2O)				
Nitrogen trifluoride (NF_3)				
Hydrofluorocarbons (HCFs)				
Perfluorocarbons (PFCs)				
Sulfur hexafluoride (SF_6)				
Totals				

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

The disclosures under Item 1504(a) would cover: (1) the most recently completed fiscal year; and (2) historical fiscal years in the consolidated financial statements in the filing (if historical data is reasonably available). A company, however, would exclude the impact of purchased or generated offsets. A smaller reporting company would provide only two years of Scopes 1 and 2 metrics. Although the release does not require GHG emissions data to be included in a company's consolidated financial statements, the Commission said such data could be read in conjunction with the consolidated financial statements.[41]

The release explained that the SEC's conceptual framework for the proposed regulation borrows from the GHG Protocol, which emphasizes scopes and direct/indirect emissions. The release said the definitions of Scopes 1, 2 and 3 are substantially similar to the definitions of those terms in the GHG Protocol. Overall, the release posited that companies' existing familiarity with the GHG Protocol could lessen the cost of complying with the SEC's proposed climate-related disclosure regulation. The release also noted that the seven greenhouse gases selected for companies to monitor and disclose information about are similar to the greenhouse gases emphasized in major international climate frameworks, such as the Kyoto Protocol, the UN Framework Convention on Climate Change, the U.S. Energy Information Administration, and the EPA.[42]

—Scopes 1 and 2 emissions. Proposed Item 1504(b) would require a company to calculate its Scopes 1 and 2 emissions from all sources within the company's organizational and operational boundaries and then separately disclose the company's total Scopes 1 and 2 emissions. The vocabulary implied by the disclosure requirement would likely play a key role in understanding exactly what must be disclosed; key terms include:

39 See proposed Item 1500(g).
40 See proposed Item 1500(h). The amount disclosed must be stated in terms of metric tons of CO_2 equivalent or CO_2e. Moreover, the provision applies to direct emissions (*i.e.*, from sources owned or controlled by the registrant) and indirect emissions (i.e., from the registrant's activities that occur at sources not owned or controlled by the registrant).
41 The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, 21383-21384, April 11, 2022.
42 Id. at 21374.

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Term	Definition
Organizational boundaries	The boundaries that determine the operations owned or controlled by the registrant for purposes of calculating its GHG emissions.
Operational boundaries	The boundaries that determine the direct and indirect emissions associated with the business operations owned or controlled by the registrant.
Scope 1 emissions	Direct GHG emissions from operations owned or controlled by the registrant.
Scope 2 emissions	Indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by the registrant.
Scope 3 emissions	All indirect GHG emissions not otherwise included in a registrant's Scope 2 emissions, which occur in the upstream and downstream activities of the registrant's value chain.
Value chain	The upstream and downstream activities related to a registrant's operations. Upstream activities relate to the initial stages of the registrant's production of a good/service (*e.g.*, materials sourcing or processing and supplier activities). Downstream activities relate to the processing of materials into a finished product and delivery of the product or providing a service to an end user (*e.g.*, transportation and distribution, processing of sold products, end of life treatment of sold product, and investments).

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

The calculation of Scopes 1 and 2 emissions also would permit companies to exclude certain items:

- Emissions from unconsolidated investments.
- Emissions that are not proportionately consolidated.
- Emissions that are not qualified for the equity method of accounting in the company's consolidated financial statements.

—GHG intensity. Next, a company must disclose the GHG intensity for its Scopes 1 and 2 emissions (the similar Scope 3 disclosure is addressed below in a section dedicated to Scope 3 disclosures). "GHG intensity (or carbon intensity)" would be defined to mean "a ratio that expresses the impact of GHG emissions per unit of economic value (*e.g.*, metric tons of CO_2e per unit of total revenues, using the registrant's reporting currency) or per unit of production (*e.g.*, metric tons of CO_2e per product produced)." According to the release, GHG intensity is a standardized method for measuring emission efficiency across companies that may provide investors with decision-useful information about the likelihood that a company may be impacted by transition risks.[43]

As a result, a company would obtain the sum of its Scopes 1 and 2 emissions in terms of metric tons of CO_2e and plug the number obtained into the following two ratios set forth in Item 1504(d) and in the definition of "GHG intensity" contained in Item 1500(i):

$$\frac{(\text{Scope 1 + Scope 2 in terms of } CO_2\text{e})}{\text{Unit of total revenue}} \qquad \frac{(\text{Scope 1 + Scope 2 in terms of } CO_2\text{e})}{\text{Unit of production (i.e., product produced)}}$$

43 Id. at 21382.

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With respect to the ratio using a unit of production, a company would need to disclose the basis for selecting the unit of production used in the calculation. A company also may use additional measures of GHG intensity if it explains why a particular measure was used and why the company believes the measure provides useful information to investors (the release suggested economic output). However, if a company had no revenue or unit of production for a fiscal year, it must disclose another financial measure of GHG intensity or another measure of GHG intensity per unit of economic output and explain why the particular measure was used. The release suggested using total assets for a company without revenue. Similarly, if a company has no unit of production, the release suggested examples of alternative measures, including data processing capacity, volume of products sold, or number of occupied rooms.[44]

—Methodology disclosures. Proposed Item 1504(e) would require disclosure of the methodology, significant inputs, and significant assumptions used to calculate GHG emissions (similar requirements for Scope 3 disclosures are discussed below in a subsection devoted to Scope 3 disclosures). Methodology-related disclosures must address:

- Organizational boundaries—A company's organizational boundaries and determinations about what GHG emissions sources it owns or controls must be consistent with its holdings and ownership/control statements made in its consolidated financial statements. A company would use the same organizational boundaries for both Scopes 1 and 2. A company must, once it has determined its organizational and operational boundaries, use those boundaries consistently when calculating its GHG emissions.
- Operational boundaries—A company's disclosure about operational boundaries would include its approach to the categorization of emissions and emissions sources. Specifically, a company would need to explain how it determined the emissions to include as direct emissions (Scope 1) and indirect emissions (Scope 2). A company must, once it has determined its organizational and operational boundaries, use those boundaries consistently when calculating its GHG emissions.
- Calculation approach—A company must disclose the emissions factors it used and the source(s) of those emissions factors. "Emission factor" would mean a multiplication factor allowing actual GHG emissions to be calculated from available activity data or, if no activity data is available, economic data, to derive absolute GHG emissions (activity data would include kilowatt-hours of electricity used, quantity of fuel used, output of a process, hours of operation of equipment, distance travelled, and floor area of a building).
- Calculation tools—A company must disclose any tools it used to calculate its GHG emissions.

The release explained in multiple locations that the reason for requiring disclosure of a company's methodology is to help users of its climate risk disclosures to understand if any changes in its disclosed information are due to implementation of strategies or changes in methodology.[45]

44 Id. at 21383.
45 Id. at 21387.

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GHG Intensity Methodology Step-by-Step				
1	**2**	**3**	**4**	**5**
Determine organizational boundaries. • ASC Topic 810 (Consolidation). • ASC Topic 323 (Investments—Equity Method and Joint Ventures). • If disclose Scope 3 emissions, use same organizational boundaries as for Scopes 1 and 2.	Describe operational boundaries (*i.e.,* emissions sources within organizational boundaries). • Categorize as direct or indirect. • Possible emissions sources: (1) Stationary equipment. (2) Transportation. (3) Manufacturing processes. (4) Fugitive emissions (*e.g.,* leaks).	Select/disclose GHG emission calculation approach. • Direct measurement (most accurate and most costly). • Published emissions factors ("acceptable and common method"). • Sources of emissions factors: (1) U.S. EPA. (2) GHG Protocol.	Collect data and make calculations. • Use publicly available calculation tools.	Report GHG emissions up to the corporate level.

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, 21384-21387, April 11, 2022.

Proposed Item 1504(e)(4) would provide that a company generally may use reasonable estimates when disclosing its GHG emissions if it also describes the assumptions underlying the estimates and its reasons for using the estimates. A special rule would apply to the situation where a company lacks FY Q4 GHG emissions data for its most recently completed fiscal year; in this instance, the company could use a reasonable estimate of its fourth fiscal year quarter while using actual, determined data for the prior three fiscal year quarters if it promptly discloses in a later filing any material differences between the estimated FY Q4 data and the actual, determined FY Q4 data.

Under Item 1504(e)(5), a company would have to disclose, to the extent material and as applicable, any use of third-party data when calculating its GHG emissions, regardless of the particular scope of emissions. This disclosure would include disclosure of: (1) the source of the third party data; and (2) the process the company used to obtain and access the third party data.

Item 1504(e)(7) would require a company to disclose any material gaps in data required to calculate GHG emissions. The proposed Item states as a goal providing investors with a reasonably complete understanding of a company's GHG emissions in each scope (*i.e.*, Scopes 1, 2, and 3). If a company discloses gaps in its data, it must discuss: (1) the use of proxy data or other methods to fill the gaps; and (2) how its accounting for the gaps affected the accuracy or completeness of its GHG emissions disclosures.

Lastly, Item 1504(e)(6) would require a company to disclose any material changes to its methodology or the assumptions underlying its GHG emissions disclosure versus the prior fiscal year.

—Scope 3 emissions. A company would disclose its Scope 3 emissions under proposed Item 1504(c). The disclosure would cover GHG emissions from sources not owned or controlled by the company. The general rule would be that a company must disclose its Scope 3 emissions if they are material or if the company has set a GHG emissions reduction target/goal that includes its Scope 3 emissions. The release, however, acknowledged the inherent uncertainties surrounding Scope 3 GHG emissions ("a relatively new type of metric, based largely on third-party data") and, thus, the proposal seeks to balance the limits of Scope 3 data and investor demand for such data. Said the release: "We are proposing the disclosure of this metric because we believe capital markets have begun to assign financial value to this type of metric, such that it can be material information for investors about financial risks facing a company."[46]

The disclosure of Scope 3 emissions would have multiple parts and may be summarized as follows:

- Provide Scope 3 emissions disclosure separate from disclosures of Scopes 1 and 2 emissions.

46 Id. at 21381.

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- Identify the categories of upstream/downstream activities included in the calculation of the company's Scope 3 emissions.
- Identify all "significant" categories of Scope 3 emissions and provide separate data for them along with total Scope 3 emissions.
- Describe data sources used to calculate Scope 3 emissions, including: (1) emissions reported by the parties in the company's value chain (state if the data is verified by the company, verified by a third party, or unverified); (2) data regarding specific activities as reported by parties in the company's value chain; and (3) data derived from various sources, including economic studies, published databases, government statistics, industry associations, and third party sources outside the company's value chain.
- Per Item 1504(d)(2), a separate disclosure of GHG intensity for Scope 3 emissions if Scope 3 emissions are otherwise disclosed.
- Per Item 1504(e)(8), include in Scope 3 emissions any GHG emissions from outsourced activities previously conducted as part of the company's own operations per the company's financial statements for periods covered by the filing. Outsourced activities are part of both the materiality determination regarding Scope 3 emissions and the disclosure requirement for Scope 3 emissions.
- Per Item 1504(e)(9), a description of any significant overlap in the categories of activities producing Scope 3 emissions, how the company accounted for the overlap, and the effect of the overlap on the disclosed total Scope 3 emissions.

The precise definition of what upstream and downstream GHG emissions a company has that do not fall into Scope 2 and, thus, are Scope 3 GHG emissions, may not always be clear. The release suggested that when an emissions source could belong to more than one category of emissions a company would have to use its "best judgment" to categorize those emissions while also providing investors with an explanation of how it arrived at the resulting categorization.[47] Nevertheless, the formal definition of "Scope 3 emissions" includes a non-exclusive list of upstream and downstream emissions:

Scope 3 GHG Emissions Categories

Upstream Activities	Downstream Activities
Registrant's purchased goods and services.	Transportation and distribution of a registrant's sold products, goods or other outputs.
Registrant's capital goods.	Processing by a third party of a registrant's sold products.
Registrant's fuel and energy related activities not included in Scope 1 or Scope 2 emissions.	Use by a third party of a registrant's sold products.
Transportation and distribution of purchased goods, raw materials, and other inputs.	End-of-life treatment by a third party of a registrant's sold products.
Waste generated in a registrant's operations.	Registrant's leased assets related principally to the sale or disposition of goods or services.
Business travel by a registrant's employees.	Registrant's franchises.
Employee commuting by a registrant's employees.	Investments by a registrant.
Registrant's leased assets related principally to purchased or acquired goods or services.	

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, 21380, April 11, 2022.

With respect to methodology, Item 1504(e)(3) would provide that a company should use its Scopes 1 and 2 organizational boundaries as initial steps in making any Scope 3 emissions disclosures. As previously mentioned regarding Scopes 1 and 2, this Item also provides that once a company has determined its organizational and operational boundaries it must consistently use them when calculating its GHG emissions.

Moreover, proposed Item 1504(e)(4) would provide that a company generally may use reasonable estimates when disclosing its GHG emissions if it also describes the assumptions underlying the estimates and its reasons for using the estimates. Similarly, a company may present its estimated Scope 3 emissions as a range if it discloses the reasons for using a range and the assumptions underlying the selected range.

— —Materiality. The proposing release suggested that a quantitative analysis of materiality may suffice for companies whose Scope 3 GHG emissions are "a relatively significant portion" of their total GHG emissions, although the Commission did not propose a quantitative threshold. Citing a pre-comment from Uber Technologies along with TCFD guidance on metrics, the release indicated that some companies rely

47 Id. at 21380.

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on a quantitative threshold of 40 percent. The release, however, stated that for a company whose Scope 3 GHG emissions are less than "a relatively significant portion" of their total GHG emissions, quantitative analysis would be insufficient by itself to be determinative of materiality; such companies would instead have to rely on more traditional materiality analysis that is focused on the "total mix of information available to investors, including an assessment of qualitative factors." As a result, the release suggested that under a more traditional materiality analysis even a comparatively small amount of Scope 3 GHG emissions might still be material:

> Accordingly, Scope 3 emissions may make up a relatively small portion of a registrant's overall GHG emissions but still be material where Scope 3 represents a significant risk, is subject to significant regulatory focus, or " if there is a substantial likelihood that a reasonable [investor] would consider it important." Moreover, if a materiality analysis requires a determination of future impacts, *i.e.*, a transition risk yet to be realized, then both the probability of an event occurring and its magnitude should be considered. Even if the probability of an adverse consequence is relatively low, if the magnitude of loss or liability is high, then the information in question may still be material (footnote omitted).

Moreover, the release suggested that a company that determines its Scope 3 GHG emissions are not material might provide investors with some discussion of how it made that determination. Similarly, if a company determines that some, but not all, categories of Scope 3 GHG emissions are material, it might provide investors with some discussion of why certain categories were not material.[48]

Lastly, the proposing release sought public comment on whether the Commission should set a quantitative threshold for Scope 3 GHG emissions disclosure (the Commission suggested 25 percent, 40 percent, and 50 percent as discussion starters). The proposing release also asked whether the Commission should mandate Scope 3 disclosures for companies in industries where Scope 3 GHG emissions make up a "high percentage" of total GHG emissions.[49]

— —Target or goal includes Scope 3 GHG emissions. The release implies that requiring disclosure of Scope 3 GHG emissions when a company sets a GHG emissions target/goal that includes Scope 3 GHG emission could function as a mode of keeping companies honest about how they plan to address Scope 3 GHG emissions. The release posits the example of a company that discloses an aggressive Scope 3 target but makes only small investments towards achieving that target; here, said the release, the company would likely have to make a big investment, alter its business operations, or miss its target. The release further posits that Scope 3 disclosures could help investors judge any potential adverse effects on a company and compare one company to others. Said the release: "Thus, the objective of this disclosure is not to drive targets, goals, plans, or conduct, but to provide investors with the tools to assess the implications of any targets, goals, or plans on the registrant in making investment or voting decisions."[50]

— —Smaller reporting companies. Proposed Item 1504(c) would exempt smaller reporting companies from making disclosures about their Scope 3 emissions. A "smaller reporting company" or SRC is a company that is not an investment company, ABS issuer, or majority owned subsidiary of a company that is not an SRC, and which has public float less than $250 million or annual revenues less than $100 million and either no public float or public float less than $700 million. A company's SRC status is determined annually.[51]

The release stated that the basis for the exemption for SRCs is the "proportionately higher costs" SRCs would likely encounter in complying with the regulation versus other types of issuers. The release also asked if the exemption should be extended to more types of issuers, including

48 Id. at 21379.
49 Id. at 21381.
50 Id. at 21379-21380.
51 See, Securities Act Rule 405, Exchange Act Rule 12b-2, and Item 10(f)(1) of Regulation S-K.

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emerging growth companies, foreign private issuers, and certain initial public offerings. The release further asked if, instead of providing an exemption, the Commission should provide an even longer compliance onramp for SRCs' versus other companies regarding Scope 3 GHG emissions. Lastly, the release asked whether an SRC should be denied the exemption if it has set a target/goal for Scope 3 GHG emissions or has otherwise made a commitment to lower its Scope 3 GHG emissions.[52]

— —Financial institutions. The SEC's climate risk proposal would require financial institutions to disclose their material Scope 3 emissions and likely any financed Scope 3 emissions. That would entail totaling the amount of GHG emissions arising from a financial institution's equity or debt financing of any number of companies. Although the release explained that financial institutions would have flexibility to select a methodology and that no particular methodology would be required, the release did suggest the Partnership for Carbon Accounting Financials' Global GHG Accounting & Reporting Standard as a method that would complement the GHG Protocol.[53]

— —Safe harbor. Proposed Item 1504(f) of Regulation S-K would offer significant liability protection with respect to Scope 3 emissions disclosures. Specifically, a Scope 3 emissions statement disclosed under proposed Items 1500-1506 of Regulation S-K and made in a document filed with the Commission would not result in liability for fraud unless it is shown that the statement was made or reaffirmed without reasonable basis or was not disclosed in good faith.

Proposed Item 1504(f) also would define "fraudulent statement" to 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
- 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, the Exchange Act, and corresponding regulations.

Moreover, the proposing release noted that Securities Act Rule 409 and Exchange Act Rule 12b-21 also would be available regarding Scope 3 GHG emissions disclosures. Those rules provide that information generally may be omitted from SEC filings if the information is unknown and not reasonably available to the company, either because obtaining the information would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the company. However, a company must give any information it possesses or can acquire without unreasonable effort or expense along with the sources of the information. Also, a company must include a statement in its filing either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.[54]

For purposes of public comment, the proposing release raised the question of how long the safe harbor should apply. Here, the release suggested the possibility of either sunsetting the safe harbor after a period of years or sunsetting the safe harbor after certain yet-to-be-formulated conditions have been met.[55]

Item 1505: Attestation—Scopes 1 and 2 disclosures. A company that is required to make Scopes 1 and 2 GHG emissions disclosures under proposed Item 1504 of Regulation S-K, and that is either a large accelerated filer or an accelerated filer, must include in its applicable SEC filing a section titled "Climate-Related Disclosure" that includes a GHG Emissions Attestation Report and other required disclosures. However, the level of assurance required for an attestation engagement will initially vary while companies come into compliance with the regulation.

52 The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, 21391-21392, April 11, 2022.
53 Id. at 21387.
54 Id. at 21391.
55 Id. at 21391.

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<table>
<tr><th>Sample SEC Filing</th><th>GHG Emissions Attestation Report: Assurance</th></tr>
<tr><td>Forms S-1; S-3; S-4; S-11; F-1; F-3; F-4; 10; 20-F; 6-K; 10-Q; and 10-K.[56]</td><td rowspan="2">1. After the compliance date but before limited assurance required:
• Applies to accelerated and large accelerate filers.
• Follow the rule for voluntary GHG emissions disclosures contained in Item 1505(e) of Regulation S-K.

2. FYs 2 and 3 after compliance date for Regulation S-K, Item 1504:
• Limited assurance (at minimum).
• May elect to obtain reasonable assurance.
• At minimum, must cover Scopes 1 and 2 GHG emissions disclosures.

3. FYs 4+ after compliance for Regulation S-K, Item 1504:
• Reasonable assurance.
• At minimum, must cover Scopes 1 and 2 GHG emissions disclosures.

Note: If the filer is not an accelerated or large accelerate filer, follow the rule for voluntary GHG emissions disclosures contained in Item 1505(e).

Note: For GHG emissions disclosures not required to obtain assurance (e.g., GHG intensity metrics or Scope 3 emissions disclosures), a company that is an accelerated or large accelerate filer may obtain any level of assurance but would have to comply with Items 1505(b)-(d) and use the same attestation standard as is required for assurance of Scopes 1 and 2 emissions.</td></tr>
<tr><td>Climate-Related Disclosure

• GHG Emissions Attestation Report (Regulation S-K, Item 1505(c).
• Additional Disclosures by Company (Regulation S-K, Item 1505(d).
• Disclosure of Voluntary Attestation (Regulation S-K, Item 1505(e).</td></tr>
</table>

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33–11042, March 21, 2022, 87 F.R. 21334, 21392, April 11, 2022.

—Contents of attestation report. Generally, proposed Item 1505(a)(2) provides that an attestation report must be provided in accordance with standards that are publicly available at no cost and that have been established by a body that observes due process procedures (the proposing release suggested that attestation standards developed by the Public Company Accounting Oversight Board (PCAOB), the Association of International Certified Professional Accountants (AICPA), and International Auditing and Assurance Standards Board (IAASB) would satisfy the due process requirement). The release explained that no specific standard would be prescribed but that the regulation would be protective of investors by limiting the universe of standards to those that are "sufficiently developed."[57]

Proposed Item 1505(c) further provides that the form and content of an attestation report must adhere to the standard(s) used by the GHG emissions attestation provider.

The release also noted that the proposed regulation's conception of the GHG emissions attestation report would not include attestation to the effectiveness of internal control over GHG emissions disclosure regardless of whether the GHG emissions attestation engagement involves limited or reasonable assurance.[58]

Under the proposed regulation, which sets the minimum[59] content requirements for a GHG emission attestation report, each of the three types of disclosures to be made in the Climate-Related Disclosure section of an SEC filing would have different contents, although the level of assurance and the GHG emissions attestation provider's independence and conflicts with the company filing the report are common themes across each type of disclosure report.

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56 The proposing release would explicitly amend Forms S-1, S-4, S-11, F-4, 10, 20-F, 6-K, 10-Q, and 10-K. Forms S-3, F-1, and F-3 would be implicitly amended to the extent they require disclosures made in another form (*e.g.*, Form F-1 must include the disclosures made in Part I of Form 20–F) or would otherwise include information incorporated by reference into the form (e.g., Forms S-3 and F-3 would incorporate by reference the climate-related disclosures from Forms 10–K or 20–F). See Id. at 21408 (and the same at n. 690).

57 Id. at 21401.

58 Id. at 21401.

59 Id. at 21401.

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<table>
<tr><th colspan="3">Climate-Related Disclosures and Attestation</th></tr>
<tr><th>GHG Emissions Attestation Report
(Regulation S-K, Item 1505(c))</th><th>Additional Disclosures by Company
(Regulation S-K, Item 1505(d))</th><th>Disclosure of Voluntary Attestation
(Regulation S-K, Item 1505(e))</th></tr>
<tr><td>Applies to: (i) accelerated filers; and (ii) large accelerated filers.</td><td>Applies to: (i) accelerated filers; and (ii) large accelerated filers.</td><td>Applies to any company that is not required to include a GHG emissions attestation report in applicable SEC filings (i.e., a company other than an accelerated or large accelerated filer).</td></tr>
<tr><td>Generally, the form and content of an attestation report must adhere to the standard(s) used by the GHG emissions attestation provider. Nevertheless, Item 1505(c) would impose the following minimum requirements:
• Describe the subject matter or assertion being reported on (include point in time or time period of measurement or evaluation).
Note: The proposing release offers as an example the subject matter of Scopes 1 and 2 emissions disclosures and other voluntary items such as GHG intensity metrics or Scope 3 emissions.[60]
• Identify criteria against which subject matter was measured or evaluated.
Note: The proposing release states the criteria must be “suitable” as set forth in proposed Item 1504.[61]
• State the level of assurance and describe the nature of the engagement.
• State the attestation standard(s) used.
• Describe the company’s responsibility to report on the subject matter or assertion being reported on.
• Describe the attestation provider’s responsibilities in connection with preparation of the attestation report.
• State that the attestation provider is independent.
• For a limited assurance engagement, describe the work performed as a basis for the provider’s conclusion.
• State significant inherent limits (if any) associated with measurement or evaluation of the subject matter against the criteria.
• State the GHG emissions attestation provider’s conclusion (based on applicable attestation standard(s) used).
Note: The proposing release noted the standards for the two types of assurance:
(i) limited assurance; “state whether the provider is aware of any material modifications that should be made to the subject matter in order for the disclosure to be in accordance with (or based on) the requirements specified in Item 1504, or for the registrant’s assertion about such subject matter to be fairly stated;” and
(ii) for reasonable assurance: “provide an opinion on whether the subject matter is in accordance with (or based on) the requirements specified in Item 1504 in all material respects, or that the registrant’s assertion about its subject matter is fairly stated, in all material respects.”[62]
• Include the attestation provider’s signature.
• Include the city and state where the attestation report has been issued.
• Include the date of the attestation report.</td><td>• State whether the attestation provider has a license from a licensing or accreditation body to provide assurance.
Note: The proposing release suggested the example of a Certified Public Accountant license issued by a state board of accountancy.[63]
• Identify the licensing or accreditation body.
• Identify whether the attestation provider is a member in good standing of the licensing or accreditation body.
• State whether the GHG emissions attestation engagement is subject to any oversight inspection program and state which program(s) the engagement is subject to.
Note: The proposing release suggested AICPA’s peer review program as an example of an oversight inspection program.[64]
• State whether the attestation provider is subject to record-keeping requirements regarding work performed for the GHG emissions attestation engagement.
• Identify: (i) the record-keeping requirement and (ii) the duration of the record-keeping requirement.</td><td>• Identify the provider of the 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 if the third-party service provider has any other business relationships with or has provided other professional services to the company that may lead to an impairment of the service provider’s independence regarding the company.
• Describe any oversight inspection program to which the service provider is subject.
Note: The proposing release suggested AICPA’s peer review program as an example of an oversight inspection program.[65]</td></tr>
</table>

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

60 Id. at 21402.
61 Id. at 21402.
62 Id. at 21403. The footnotes to this portion of the release cite AICPA SSAE No. 22, AT–C sec. 210.45(l) and AICPA SSAE No. 21 AT–C sec. 205.63(k) and sec. 206.12(j).
63 Id. at 21404.
64 Id. at 21404.
65 Id. at 21405.

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—GHG emissions attestation provider. A company's GHG emissions attestation report must be prepared and signed by a GHG emissions attestation provider. Proposed Item 1505(b) defines "GHG emissions attestation provider" as someone who possesses the requisite expertise and independence necessary to attest to a report of a company's GHG emissions. With respect to independence, the applicable provision in the proposed regulation would use Rule 2-01 of Regulation S-X as a model.[66] Although not mentioned in the proposing release, Rule 2-01 makes a significant observation: the Commission, in drafting the rule, could not contemplate every instance in which an accountant's independence might be compromised, so Rule 2-01 states a few specific instances where independence might be compromised as a form of guidance but then relies on a catch-all provision focused on the facts and circumstances of the audit engagement.[67] The proposed GHG emission attestation Item would follow the same pattern.

Moreover, the proposing release posits that a GHG emissions attestation provider would be inclined to exercise due diligence regarding its attestation obligations because its attestation conclusion and any opinion it provided would be subject to liability under federal securities laws.[68] With respect to registration statements, liability would potentially attach under Securities Act Sections 7 and 11 because a GHG emissions attestation provider would be considered along with any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, named as having prepared or certified any part of the registration statement, or named as having prepared or certified a report or valuation for use in connection with the registration statement, whose written consent must be filed with the registration statement.[69]

GHG Emissions Attestation Provider Requirements

Expertise	Independence
General rule: A GHG emissions attestation provider must be an expert in GHG emissions with significant experience in measuring, analyzing, reporting, or attesting to GHG emissions. "Significant experience" means sufficient competence and capabilities necessary to: • Perform engagements according to professional standards and applicable legal and regulatory requirements; and • Enable the service provider to issue reports appropriate under the circumstances. Policies and procedures: The proposing release further states that a service provider that is a firm would be expected to have policies and procedures designed to provide it with reasonable assurance that its personnel conducting GHG emissions attestation engagements have the requisite experience regarding attestation engagements and GHG disclosure.[70] Questions for public comment: Two related questions ask: (1) should a GHG emissions attestation provider be a PCAOB-registered audit firm? And (2) should the policies and procedure expectation for GHG emissions attestation providers that are firms be made a requirement.[71]	General rule: A GHG emissions attestation provider must be independent from the company and its affiliates during the attestation and professional engagement period. "Attestation and professional engagement period" would mean: • The period covered by the attestation report and the period of the engagement to attest to the registrant's GHG emissions or to prepare a report filed with the SEC ("the professional engagement period"). • Start date of professional engagement period—The earlier of when the GHG attestation service provider: (i) signs an initial engagement letter; or (ii) begins attest procedures. Absence of independence: The proposed rule would provide that a GHG emissions attestation provider is not independent if the attestation provider is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that such attestation provider is not, capable of exercising objective and impartial judgment on all issues encompassed within the attestation provider's engagement. The Commission also would be directed to consider several factors regarding independence: • Whether there are mutual or conflicting interests between the attestation provider and the company; • Whether the attestation provider was in a position to attest to their own work; • Whether the attestation provider acted as a manager or employee of the company; • Whether the attestation provider was in a position of advocate for the company; • All relevant circumstances (this would be a broader category of financial and other relationships between the attestation provider and the company that goes beyond reports filed with the SEC).

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

66 Id. at 21399.
67 See, Rule 2-01 (introductory paragraph) and Rule 2-01(b). In 2020, the Commission amended Rule 2-01 to, among other things, replace the Preliminary Note with an introductory paragraph. See, Qualifications of Accountants, Release No. 33–10876, October 16, 2020, 85 F.R. 80508, October 16, 2020.
68 The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, 21399, April 11, 2022.
69 Id. at 21400.
70 Id. at 21398
71 Id. at 21400.

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—Key questions for public comment. The proposing release poses numerous questions for public comment regarding attestation of Scopes 1 and 2 GHG emissions. Some of the more searching questions ask:

- Should the Commission require attestation for GHG intensity metrics or disclosed Scope 3 emissions?
- Whether attestation should be limited to a subset of accelerated/large accelerated issuers such as well-known seasoned issuers (WKSIs)?
- Whether to require attestation from filers other than accelerated/large accelerated filers.
- Should the Commission allow the experience requirement to be met by a GHG attestation provider's being in good standing with an accreditation body?
- Would subjecting GHG attestation providers to potential liability under Securities Act Sections 7 and 11 deter qualified persons from being attestation providers? Should the Commission amend Securities Act Rule 436(c) or create a similar rule to provide that GHG emissions attestations provided at the level of limited assurance not be considered part of a registration statement for purposes of liability under Securities Act Sections 7 and 11.[72]
- With respect to voluntary disclosures, the Commission asked: (1) should a company make an assurance or verification report available to investors via furnishing a copy or providing a link to the report; and (2) should a third-party provider engaged by a company be required to be independent or should the Commission issue guidance on when a service provider's independence would be impaired.[73]

Item 1506: Targets and goals disclosures. Proposed Item 1506 would require any company that is subject to the SEC's climate-related disclosure regulations and that has set any targets or goals related to the reduction of GHG emissions, or any other climate-related target or goal, to make a series of disclosures about those targets and goals and how the targets or goals are to be achieved. The proposed Item suggested that targets or goals may be set regarding: (1) actual or anticipated regulatory requirements; (2) market constraints; or (3) other goals established by a climate-related treaty, law, regulation, policy, or organization. Targets and goals also may include topics such as energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products, according to the example set forth in the proposed regulation.[74]

Offsets and RECs are likely to be a significant part of a company's disclosures about its targets and goals. See the section above regarding proposed Item 1502(c) for a more detailed discussion of what offsets and RECs are and how companies use them to meet GHG emissions reduction targets and goals.

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72 Id. at 21396-21397.
73 Id. at 21405.
74 The proposed rule text is somewhat awkwardly phrased, but the Commission's supplemental materials attempt to clarify what is meant by targets or goals. Id. at 21405.

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Requirements for climate-related targets and goals		
Targets/goals disclosures (Regulation S-K, Item 1506(b))	**Data disclosures** (Regulation S-K, Item 1506(c))	**Carbon offsets/RECs** (Regulation S-K, Item 1506(d))
Disclose the company's climate-related targets or goals. As applicable, also disclose the following: • The scope of activities and emissions included in the target. • The unit of measurement (also state whether the target is absolute or intensity -based). • The defined time horizon by which the target is intended to be achieved; also disclose whether the time horizon is consistent with one or more goals established by a climate-related treaty, law, regulation, policy, or organization. • The defined baseline time period and the baseline emissions against which progress will be tracked (use a consistent base year for multiple targets). • Any interim targets set. • How the company intends to meet climate-related targets or goals. The proposed regulation suggested the example of a disclosed target for net GHG emissions reduction, which may include discussion of: (i) a strategy to increase energy efficiency; (ii) the transition to lower-carbon products; (iii) the purchase of carbon offsets or RECs; or (iv) efforts to engage in carbon removal/storage.	The proposed regulation would require further disclosure of relevant data that would indicate whether the company has progressed toward its target/goal and how that progress was achieved. The data disclosure would have to be updated each fiscal year to state actions taken during the fiscal year.	If a company uses carbon offsets or RECs to achieve its climate-related targets/goals, it must disclose: • The amount of carbon reduction represented by offsets. • The amount of generated renewable energy from RECs. • The source(s) of offsets and RECs. • A description and the location of underlying projects (Proposed Item 1500(k) defines "location" to mean postal Zip code or a similar subnational postal zone or geographic location). • Any registries or other authentication of the offsets or RECs. • The cost of any offsets or RECs.

Source: Adapted from The Enhancement and Standardization of Climate Related Disclosures for Investors, Release No. 33-11042, March 21, 2022, 87 F.R. 21334, April 11, 2022.

—Placement of targets/goals disclosure. Proposed Item 1506 would afford a company some options regarding where its climate-related targets/goals disclosure is made in its SEC filings. For one, a company could provide the disclosure in a subsection within its Climate-Related Disclosure section devoted to Item 1506. Alternatively, a company could provide its climate-related targets/goals disclosures as part of its disclosures regarding: (1) strategy, business model, and outlook (Item 1502); or (2) risk management (Item 1503). The release explained that, if the alternative approach is selected, the company need not repeat its climate-related targets/goals disclosure in a subsection devoted to Item 1506 but it should include in the Item 1506 subsection a cross-reference to the subsection where the disclosure appears.[75]

—Safe harbor. According to the release, the climate-related targets/goals disclosure "should not be construed to be promises or guarantees." As a result, since much of this information may be forward-looking, the release further explained that the PSLRA safe harbor for forward-looking statements would likely apply.[76]

Item 1507: Interactive data requirement. Proposed Item 1507 of Regulation S-K would require companies subject to the proposed climate-related disclosure regulation to provide in an interactive data file the disclosures required by proposed Subpart 1500 of Regulation S-K and proposed Article 14 of Regulation S–X. Rule 405 of Regulation S-T sets forth the requirements for interactive data files. A key element of Rule 405 is the use of Inline eXtensible Business Reporting Language (Inline XBRL).

75 Id. at 21407 (There is a typographical error on this page in the proposing release in which the supplemental materials refer to "17 CFR 229.1505(a)(2)" but should instead refer to "17 CFR 229.1506(a)(2)").
76 Id. at 21407.

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According to the release, the use of Inline XBRL would make climate disclosure information more accessible to the investing public and would allow more sophisticated comparisons among companies over periods of time than would otherwise be possible using non-machine-readable markup such as ASCII or HTML. The release also posited that the incremental compliance burden would not be unduly burdensome because many companies already are (or soon will be) required to provide their other SEC filings in the form of an interactive data file. It is possible that the Commission would issue a future update to the EDGAR Filer Manual to formalize any specific requirements for interactive data files related to climate-related disclosures required by proposed Subpart 1500 of Regulation S-K and proposed Article 14 of Regulation S–X.[77]

The release posed several questions regarding the use of interactive data files for climate risk disclosures. For one, the release asked if both narrative and quantitative disclosures should be tagged or if only quantitative disclosures should be tagged. The release also sought public comment on whether the Commission should consider existing third-party taxonomies and whether the Commission should consider a different structured data language for the tagging of climate-related disclosures.[78]

Filed, not furnished

As proposed, climate-related disclosures made on the forms identified by the Commission would be treated as "filed" rather than "furnished." That means that liability could attach under Securities Act Section 11 (registration statements) and Exchange Act Section 18 (misleading statements in filings).[79]

The proposing release explained that pre-comments in favor of "filed" climate-related disclosures noted the propensity of looming liability to push companies to ensure greater accuracy and completeness in their disclosures; pre-comments urging "furnished" climate-related disclosures emphasized that furnishing these disclosures is more consistent with the need to include many projections and that a "filed" requirement could discourage companies from making broader disclosures.[80]

The Commission's proposing release ultimately concluded that climate-related disclosures should be filed while also acknowledging that a "filed" requirement may promote accuracy, that climate-related disclosures are similar to other business and financial disclosures that are treated as filed, and further positing that most climate-related disclosures would come from the companies themselves rather than external sources. Moreover, the release reiterated that the Commission has proposed to apply multiple safe harbors, some of which are specific to climate-related disclosures and some that apply broadly to many types of disclosures, such as the PSLRA safe harbor for forward-looking statements.[81]

Looking ahead

The extended public comment period for the Commission's proposed climate risk disclosure rules has ended. The Commission likely will have thousands of comments to review before it considers adoption of final climate-related disclosure regulations. Assuming that the Commission will move to adopt such regulations before the end of 2022 and, depending on a final rule's contents and how courts ultimately apply the Supreme Court's opinion in *West Virginia v. EPA,* public companies and the investing public will begin to turn to issues of compliance, while some representatives of public companies and associated trade groups will likely turn to the courts to challenge portions of (or perhaps the entirety of) any final SEC climate-related disclosure regulations. ■

77 Id. at 21410.
78 Id. at 21410-21411.
79 The release noted that Form 6-K would not fall within the ambit of Exchange Act Section 18 because that form expressly states that such liability does not attach. See, Form 6-K at General Instructions B. (third paragraph). Id. at 21411.
80 Id. at 21411.
81 Id. at 21411.

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