

SEC adopts major climate-related disclosure requirements

March 2024

Final rules drop Scope 3 disclosure requirements, exempt smaller companies from Scope 1 & 2 disclosure, relax assurance requirements

On March 6, 2024, the U.S. Securities and Exchange Commission (the “SEC”) adopted its long-awaited **climate-related disclosure rules**, which mandate scaled-back, but still significant, climate-related disclosures from SEC registrants, including foreign private issuers.

In this briefing we present a high-level summary of the new requirements. In the coming weeks, we will be issuing a more detailed analysis of the rules and the 886-page adopting release, including a comparison with the requirements of the UK, the EU CSRD and the International Sustainability Standards Board.

What disclosures are required?

The final rules require SEC registrants (i.e., SEC-reporting companies and companies filing registration statements) to include the following in their registration statements and annual reports filed with the SEC:

- > A description of any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations and financial condition in the short term (i.e., the next 12 months) and the long-term (i.e., beyond the next 12 months), as well as the actual or potential material impacts of those same risks on its strategy, business model and outlook;
- > Quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions that directly result from a registrant’s activities, if any, to mitigate or adapt to a material climate-related risk or the use of transition plans to manage a material transition risk. In subsequent years, registrants must describe actions taken during the year under the plan;
- > Specified disclosures about scenario analysis or internal carbon prices if used by the registrant and material to how it evaluates and manages climate-related risk;
- > Disclosure about any oversight by the registrant’s board of directors of climate-related risks and any role by management in assessing and managing material climate-related risks;
- > A description of any processes the registrant uses to assess or manage material climate-related risks;



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What are Scope 1, 2 and 3 emissions?

Scope 1 emissions are direct GHG emissions from operations that are owned or controlled by a registrant.

Scope 2 emissions are indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant.

Scope 3 emissions are all indirect GHG emissions not otherwise included in a registrant’s Scope 2 emissions, which occur in the upstream and downstream activities of a registrant’s value chain.

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- > Disclosure about any climate-related targets or goals that have materially affected or are reasonably likely to materially affect the registrant's business, results of operations or financial condition, including material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or actions taken to make progress toward meeting the target or goal;
- > Disclosure of Scope 1 and/or Scope 2 greenhouse gas ("GHG") emissions by accelerated filers ("AFs") and large accelerated filers ("LAFs") if those emissions are material;
- > Disclosure of the capitalized costs, expenditures expensed, charges and losses incurred as a result of severe weather events and other natural conditions, subject to applicable one percent of pre-tax income or loss and de minimis disclosure thresholds (U.S.\$100,000 in the income statement or U.S.\$500,000 in the balance sheet);
- > Disclosure about capitalized costs, expenditures expenses and losses related to certain carbon offsets and renewable energy credits or certificates if material to how a registrant will achieve its climate-related targets or goals; and
- > A qualitative description of how estimates and assumptions used to produce the financial statements were materially impacted by risks and uncertainties associated with severe weather events and other natural conditions or any climate-related targets or transition plans.

Severe weather events and other natural conditions include hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures and sea level rises. However, this list is non-exhaustive and could be read expansively, which may necessitate additional SEC guidance on the meaning of "other natural conditions," as highlighted by Commissioner Hester Pierce.

Both narrative and quantitative climate-related disclosures must be tagged in Inline XBRL.

Are there any exemptions?

The final rules do not apply to Form 40-F filers or asset-backed issuers, and smaller reporting companies ("SRCs") and emerging growth companies ("EGCs") are exempt from the Scope 1 and Scope 2 disclosure requirements.

The SEC declined to adopt substituted compliance for foreign private issuers but said it might consider such accommodations in the future. For now, foreign private issuers and U.S. domestic issuers are subject to same climate-related disclosure requirements.

What assurance is required?

AFs and LAFs that are required to disclose Scope 1 and/or Scope 2 emissions must obtain an assurance report at the "limited assurance" level, beginning with the third fiscal year after the compliance date for disclosure of GHG emissions (as set out in the chart below). LAFs that are required to disclose Scope 1 and/or Scope 2 emissions must obtain an assurance report at the "reasonable assurance" level beginning with the seventh fiscal year

Issuer categories

A *smaller reporting company* is an issuer that has a public float of less than \$250m; or has annual revenues of less than \$100m and either: (i) no public float or (ii) a public float of less than \$700m.

An *accelerated filer* is a reporting company that has a public float between \$75m and \$700m, has been filing periodic reports for at least 12 months, has previously filed at least one annual report and is not an SRC.

A *large accelerated filer* is a reporting company meeting the same conditions but with a public float of \$700m or more, as of the last business day of the issuer's most recently completed second fiscal quarter.

A *non-accelerated filer* is a reporting company that does not meet the requirements of a large accelerated or an accelerated filer.

An issuer is an *emerging growth company* if it has total annual gross revenues of less than \$1.235bn during its most recently completed fiscal year. It continues to be an EGC for its first five fiscal years after its IPO, unless its total annual gross revenues are \$1.235bn or more; it has issued more than \$1bn in non-convertible debt in the past three years; or it becomes a large accelerated filer.

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after the compliance date for the disclosure of GHG emissions (as set out in the chart below).

What are the effective dates?

The final rules will become effective 60 days after their publication in the Federal Register publication (usually a few weeks after the rules' adoption). The SEC is providing phased-in compliance dates dependent upon the status of the registrant as an LAF, an AF, a non-accelerated filer ("NAF"), SRC, or EGC, and the content of the disclosure, as follows (with "FYB" meaning any fiscal year beginning in the calendar year listed):

Registrant	Reg S-K/S-X disclosure, other than as noted	Material expenditure disclosure	Scope 1 and Scope 2 disclosure	Limited assurance	Reasonable assurance
LAFs	FYB 2025	FYB 2026	FYB 2026	FYB 2029	FYB 2033
AFs (other than SRCs and EGCs)	FYB 2026	FYB 2027	FYB 2028	FYB 2031	N/A
SRCs, EGCs and NAFs	FYB 2027	FYB 2028	N/A	N/A	N/A

For example, an LAF with a fiscal year beginning on January 1 and ending on December 31 will not have to comply with most of the Regulation S-X and S-K requirements until its annual report for its January 1-December 31, 2025 fiscal year, filed in 2026. It will not be required to disclose its Scope 1 and/or Scope 2 emissions until its annual report for January 1-December 31, 2026 fiscal year, filed in 2027. These emissions disclosures would not be subject to the requirement to obtain limited assurance until the LAF's annual report for its January 1-December 31, 2029 fiscal year, due in 2030. It would not be required to obtain reasonable assurance over these emissions disclosure until its annual report for its January 1-December 31, 2033 fiscal year, due in 2034.

What are the differences from the proposal?

The SEC has significantly scaled back its 2022 proposal, including making the following changes in the final rules:

- > Eliminating the proposed Scope 3 emissions disclosure requirement;
- > Requiring only AFs and LAFs (rather than all registrants) to make Scope 1 and Scope 2 emissions disclosures, and then only if material;
- > Exempting SRCs and EGCs from the Scope 1 and Scope 2 disclosure requirements;
- > Allowing delayed Scope 1 and Scope 2 disclosure if needed (in the second quarter Form 10-Q for domestic issuers and up to 225 days after the end of the fiscal year for foreign private issuers);
- > Including a materiality qualifier on certain disclosures, including disclosures regarding impacts of climate-related risks, use of scenario analysis and maintained internal carbon price;

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- > Eliminating the proposed requirement to describe board members' climate expertise;
- > Adopting a less prescriptive approach to certain requirements, including the climate-related risk disclosure, board oversight disclosure and risk management disclosure requirements;
- > Providing AFs and LAFs with more time to obtain assurance reports and only requiring LAFs to obtain reasonable assurance reports;
- > Removing the proposed requirement to disclose the impact of severe weather events and other natural conditions and transition activities on each line item of a registrant's consolidated financial statements;
- > Focusing the required disclosure of financial statement effects on capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions in the notes to the financial statements;
- > Extending the safe harbor from private liability for certain forward-looking statements, other than historic facts, pertaining to a registrant's transition plan, scenario analysis, internal carbon pricing, and targets and goals;
- > Eliminating the requirement to disclose any material change to the climate-related disclosures provided in a registration statement or annual report in a Form 10-Q (or Form 6-K for a foreign private issuer that does not report on domestic forms);
- > Requiring the material expenditures disclosure under Regulation S-K rather than under Regulation S-X; and
- > Extending the phase-in periods for compliance.

Although the final version of the rules is less onerous than the original proposal, the rule was approved over a spirited dissent by two of the five SEC commissioners, and a coalition of 10 Republican states has already filed a [petition](#) for review of the rule in the 11th Circuit Court of Appeals. The U.S. Chamber of Commerce, which has already sued the state of California over its climate disclosure laws, also issued a [statement](#) shortly after the rules were adopted saying that it "will continue to use all the tools at [its] disposal, including litigation if necessary, to prevent government overreach and preserve a competitive capital market system."

We encourage you to contact us if you have any questions.

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