

# Enhancement and Standardization of Climate-Related Disclosures for Investors: Securities and Exchange Commission Proposed Rule



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

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The Securities and Exchange Commission (“SEC”) announced a proposed rule on March 21st that would mandate that domestic or foreign registrants include certain climate-related information in registration statements and periodic reports.

The proposal would amend the SEC’s rules under the Securities Act of 1933 and Securities Exchange Act of 1934.

Examples of climate-related information that the SEC believes would be required:

- Climate-related risks and their actual or likely material impacts on the registrant’s business, strategy, and outlook
- The registrant’s governance of climate-related risks and relevant risks management processes
- The registrant’s greenhouse gas (“GHG”) emissions
- Certain climate-related financial statement metrics disclosures
- Information about climate-related targets and goals, and transition plan, if any

Registrants would also be required to disclose information about:

- Their Direct GHG emissions (Scope 1)
- Indirect emissions from purchased electricity or other form of energy (Scope 2)
- GHG emissions from upstream and downstream activities in their value chain (Scope 3)
- If the registrant has set a GHG emissions target or goal

The SEC takes the position that:

- Broad authority is available for it to promulgate the disclosure requirements because they are necessary or appropriate in the public interest or the protection of investors
- A determination has been made that the proposed disclosure will promote efficiency, competition, and capital formation
- Requiring such disclosures about climate-related risks and metrics reflecting those risks is necessary because such information can have an impact on public companies’ financial performance or position and may be material to investors in making investment or voting decisions
- Existing disclosures of climate-related risks do not adequately protect investors necessitating additional disclosure requirements to improve consistency, comparability and reliability of climate-related disclosures

The SEC notes that the Financial Stability Oversight Council' Report on Climate-Related Financial Risk 2021 determined that businesses, financial institutions, investors, and households could experience direct financial effects from climate-related risks. It is also stated to have determined that the costs from such risks could be passed through supply chains and to customers if they reduce firms' ability to service debt or produce returns for investors.

Concern is expressed that such climate-related risks and their financial impact could negatively affect economy and create a systemic risk for the financial system. In response, the SEC notes that its disclosure rules are an essential component of the system to protect investors.

The SEC cites, as climate-related risks that could affect a company's business and financial performance, the following:

- Severe and frequent natural disasters damaging assets, disrupting operations, and increasing costs
- Transition to lower carbon products, practices, and services triggered by changes in regulations, consumer preferences, availability of financing, technology and other market forces leading to changes in a company's business model
- Worldwide governmental commitments to transition to a lower carbon economy to meet GHG reduction goals could materially impact registrants

Note that the SEC previously issued 2010 guidance regarding climate-related disclosures on how the existing rules could require disclosure of the impacts of climate change on a registrant's business and financial condition. See Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 (Feb. 2, 2010), (75 Fed. Reg. 6290), (Feb. 8, 2010).

The proposed rule provides what are described as "phase-in periods and accommodations" for the proposed disclosures. They would include:

- A phase-in period for all registrants, with compliance date depending on the registrant's filer status, an additional phase-in for Scope 3 emissions disclosure
- A phase-in period for the assurance requirement and the level of assurance required for accelerated filers and large accelerated filers
- A safe harbor for liability for Scope 3 emissions disclosure
- An exemption from the Scope 3 emissions disclosure requirement for smaller reporting companies
- Forward-looking statement safe harbors pursuant to the Private Securities Litigation Reform Act, to the extent that proposed disclosures would require forward-looking statements

A link to the 510-page prepublication proposed rule and preamble can be downloaded [here](#).