Blogs
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The SEC’s Final Climate Rules: Eight Items That Changed From the Proposal


Understanding that many of you don't have time during a busy proxy season to read the 886 pages of the SEC's climate adopting release – but yet you're fielding questions from colleagues about what's in the new rules – here are some notable items that the SEC changed from the proposed rules:

1. **Scope 3 emissions disclosures (mostly) gone** – The SEC's final rules don't require Scope 3 emissions disclosures directly. However, companies are still required to make disclosures regarding targets, goals and transition risks that have the potential to cause a company to make Scope 3 disclosures (e.g., companies that have adopted "net zero" targets under the Science-Based Targets Initiative). Companies might have other Scope 3 disclosure obligations as well, including under the California emissions disclosure law.

2. **Smaller filers granted relief** – In addition to the benefit of longer phase-in periods for their compliance dates, smaller reporting companies, emerging growth companies and non-accelerated filers aren't required to make Scope 1 and 2 emissions disclosures.

3. **Scope 1 and 2 emissions disclosures subject to a materiality qualifier** – Not only are Scope 1 and 2 disclosures limited to Large Accelerated Filers and Accelerated Filers, they have a materiality qualifier. There are a lot of materiality qualifiers in the final rules. In addition, the final rules allow the delay of these disclosures - and any related attestation - to the due date of the second fiscal quarterly report for the following year.

4. **No need to disclose interim targets** – The SEC's final rules don't include a requirement to disclose interim targets - but they do require annual disclosure about progress made towards targets and goals, and other disclosures to provide context for those targets and goals.

5. **Financial statement disclosures considered in the aggregate –** The SEC's final rules don't require evaluation of the impact on financial statements on a line-item-by-line-item basis. Instead, financial statement disclosure is required when aggregate amounts exceed 1% of pretax income or total shareholders' equity, subject to a de minimis threshold.

6. **More flexibility for board oversight disclosures –** Although the SEC's final rules are less prescriptive than what was proposed (e.g. there is no requirement for a "climate expert" on the board; but you do need to disclose management expertise), this is a rare area in the final rules where there isn't a materiality qualifier.

7. **Inclusion of a safe harbor –** The SEC's final rules include a safe harbor for transition plans, scenario analyses, targets and goals, as this type of information – with the exception of historical facts – is considered "forward-looking information" for purposes of the PSLRA.

8. **Generous compliance timeline –** The phase-in periods for compliance are lengthier than proposed. For example, large accelerated filers have nearly three years to provide GHG emission information, two years to provide most other disclosures, and six years to obtain assurance reports for GHG emissions.

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