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This is the second in a series of blogs we will be posting breaking down the SEC's new climate disclosure rules (here's the **first blog**).

We're starting with Regulation S-K Item 1502, Strategy. For the full text, see pages 853 through 856 of the **SEC's adopting release.** This is the section of the new rules that requires discussion of climate-related risks, including how these risks impact the business and how the company considers these risks in planning its business and strategy. Items 1502(e) through (g) also have specific disclosure requirements that will be relevant for companies that have adopted transition plans, use scenario analysis or use an internal carbon price.

Today's blog addresses Item 1502(b), which requires disclosure of the *actual* and *potential* material impacts of material climate-related risks (identified under Item 1502(a)) on a company's *strategy, business model, and outlook.*

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Here are four key concepts to consider in drafting disclosure responsive to Item 1502(b):

1. **Focus on Changes to Strategy and Business Resiliency.** As described on pages 114-115 of the adopting release, the information called for by this item and Item 1502(c) "is central to understanding the extent to which a registrant's business strategy or business model has changed, is changing, or is expected to change" to address the material impacts of climate risks.

   The adopting release goes on to say that this information is "central to evaluating management's response to the impacts and the resiliency of the registrant's strategy to climate-related factors as it pertains to the registrant's results of operations and financial condition." Investors may be keenly interested in these disclosures to understand the long-term sustainability and prospects of a business that is subject to significant exposure to physical or transition climate-related risks.

2. **Forward-Looking Information.** Disclosure about a company's *strategy, business model, and outlook likely will involve some forward-looking disclosure. In footnote 422 on page 114 of the adopting release, the SEC clarified that "outlook" in the context of this item means "the prospect for the future" – and doesn't require disclosure of earnings guidance or forecasts.*

3. **Another Materiality Qualifier.** Note that Item 1502(b) includes a "materiality" qualifier even though it piggybacks on the qualifier in Item 1502(a) because disclosure about *material* impacts is only required for those *material* risks identified pursuant to Item 1502(a). The SEC explicitly included this qualifier in Item 1502(b) to ensure companies know that only material impacts are required to be disclosed.

4. **Items for Companies to Consider When Analyzing Impact.** Item 1502(b) includes a *non-exclusive* list of five items that companies should consider when considering the material impacts. These five items are:

- Business operations
- Products or services
- Suppliers, purchasers or counterparties to material contracts (to the extent known or reasonably available)
- Mitigation and adaptation activities, including adoption of new technologies or processes
- R&D expenditures

As noted on page 116-117 of the adopting release, the SEC intends for this to be a non-exhaustive list, meaning not only that disclosure for any of these items might not be required if a company deems them to not be material, but also that there might be additional items that a particular company might need to consider.

It's notable that there is a "to the extent known or reasonably available" qualifier for the third item listed above: "suppliers, purchasers or counterparties to material contracts." By adding this qualifier, the SEC has eliminated any potential need for companies to undertake unreasonable searches or requests for information from their value chains. This part of Item 1502(b) aligns with the SEC's decision to exclude Scope 3 emissions disclosure from the final rule and comports with the SEC's general rules regarding the disclosure of information that is difficult to obtain.

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