Request for Comment: SEC Proposal on Climate Disclosures

Background
The Securities and Exchange Commission (SEC) published a proposed rule on March 21, 2022 to require public companies to make annual climate-related financial disclosures—like their vulnerability to climate disasters, their current level of greenhouse gas emissions, and whether they have a strategy to address their climate-related financial risks.

This rule is needed because the current practice of relying on companies' *voluntary* climate disclosures is inconsistent, inefficient, and costly. Investors spend significant time and money on shareholder voting initiatives to fill info gaps, and on verifying the unreliable information they can currently access. Smaller investors especially lack access to reliable information.

Given the growing economic risks caused by the climate crisis and the shift away from fossil fuels, petrochemicals and carbon-intensive industry, **investors want—and need—more standardized info about companies' climate-related financial risks, their contributions to climate change, and their plans for remaining solvent in a low-carbon economy.**

This SEC effort is about investor protection, fair and efficient capital markets, and capital formation. It is the SEC's job to make sure this information is freely available to all investors and the public, not just large financial institutions with vast resources.

Proposal Text and **Factsheet** **(**Comments due May 20th, 2022)

Topline: This is an important and thoughtful proposal that would elicit meaningful, comparable disclosures that investors need to assess climate-related financial risks. There are a few key areas that should be strengthened.

Proposal Strengths

- Detailed qualitative disclosures around climate strategy, governance, and risk management consistent with the Task-Force for Climate-Related Financial Disclosures (TCFD), the most common voluntary reporting framework in use today
- Greenhouse gas (GHG) emissions[1] reporting (Scopes 1 and 2), in absolute terms, not counting any purported avoided or reduced emissions, phased in over five years for most issuers (largest firms disclose for FY2023) with third-party assurance
- Incorporation of most disclosures into SEC filings (Form 10-K)
- Impacts of climate change and transition activities on consolidated financial statements (Regulation S-X)
- Details about scenario analysis and internal carbon prices

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[1]Defined in a manner consistent with GHG Protocol, the most common voluntary accounting methodology. Scope 1 emissions come directly from the issuer's facilities; Scope 2 from purchased electricity, steam and heat; Scope 3 from issuer's products, suppliers, and value chain.

- If the issuer has adopted a transition plan as part of its climate-related risk management strategy, a description of the plan, including the relevant metrics and targets used to identify and manage any physical and transition risks;
- If carbon offsets or renewable energy certificates ("RECs") have been used as part of the issuer's plan to achieve climate-related targets or goals, certain information about the carbon offsets or RECs.

Opportunities to Strengthen

- Scope 3 (value chain) GHG emissions are only required if they are "material" as determined by the issuer, or if they have set a public Scope 3 emissions target. This should be made mandatory for all large registrants with reasonable assurance (Question 98). There is also a safe harbor from liability with no sunset that should be excluded in the final rule. Per the proposal, Scope 3 disclosures will be judged to not be fraudulent unless "it is shown that such statement was made or reaffirmed without reasonable basis or was disclosed other than in good faith" (Pg. 489).
- The proposal should incorporate more disclosures around environmental justice, just transition for dislocated workers, and community-level impacts (Question 15)

Key Questions to be addressed, with short form answers

- Q15. (Pg. 75) *Are there other specific metrics that would provide investors with a better understanding of the physical and transition risks facing registrants?* **Yes–many–for example plastics and other pollution, land use change and deforestation, environmental justice, community impacts, just transition for workers, Indigenous rights, and affected community outreach activities.**

- Q24. (Pg. 94) *If a registrant has used carbon offsets or RECs, should we require the registrant to disclose the role that the offsets or RECs play in its overall strategy to reduce its net carbon emissions, as proposed?* **Yes, information about the use of carbon offsets and RECs–including the types of projects financed–is critical to assessing the credibility of net zero transition plans.**

- Q25. (Pg. 95) *Should we require a registrant to provide a narrative discussion of whether and how any of its identified climate-related risks have affected or are reasonably likely to affect its consolidated financial statements, as proposed?* **Yes**, **investors need to know how climate change and transition activities are already having quantitative impacts on issuers' financial statements, and these should be analyzed as part of the traditional audit process.**

- Q48. (Pg. 114) *If a registrant has adopted a transition plan, should we require it to disclose, if applicable, how it plans to mitigate or adapt to any identified transition risks, including the following, as proposed:*
    - *Laws, regulations, or policies that:*
        - *Restrict GHG emissions or products with high GHG footprints, including emissions caps; or*

    - *Require the protection of high conservation value land or natural assets?*
    - *Imposition of a carbon price?*
    - *Changing demands or preferences of consumers, investors, employees, and business counterparts?* **Yes**.

- Q72. (Pg. 144) *Should we require registrants to disclose the expenditure metrics, as proposed?* **Yes, in addition to qualitative descriptions of climate-related risk management and strategy, investors need to know if the level and type of capital expenditures is credibly commensurate with the plans committed to by issuers.**

- Q98. (Pg. 184) *Should we require a registrant to disclose its Scope 3 emissions for the fiscal year if material, as proposed?* **No. Scope 3 emissions disclosure should be mandatory for all large accelerated filers and accelerated filers, and should not be based on self-determined materiality**. *Should we instead require the disclosure of Scope 3 emissions for all registrants, regardless of materiality?* **Yes**. T**here is a long history of SEC requiring disclosures that are important for investor protection and fair and efficient markets, without regard for materiality on a case-by-case basis. SEC Commissioner Lee noted last year, "In practice Regulation S-K has, from the outset, required periodic reports to include information that is important to investors but may or may not be material in every respect to every company making the disclosure.[41] We have done this, for example, with respect to disclosures of related party transactions,[42] environmental proceedings,[43] share repurchases,[44] and executive compensation.[45]"**

- Q101 (Pg. 185). *Should we require a registrant to exclude any use of purchased or generated offsets when disclosing its Scope 1, Scope 2, and Scope 3 emissions, as proposed?* **Yes, it's important for standardization, comparability, and year-over-year tracking of progress for gross emissions to be separated from net emissions, and for details around offsets to be disclosed so investors can judge the credibility of these claims.**

- Q107. (Pg. 187) *Should we require a registrant to provide location data for its disclosed sources of Scope 1, Scope 2, and Scope 3 emissions if feasible?* ***Yes****. Would requiring location data, to the extent feasible, assist investors in understanding climate-related risks, and in particular, likely physical risks, associated with a registrant's emissions' sources?* **Yes, as well as to assess the transition risks that might be specific to location, such as from regulations and consumer preferences in different jurisdictions, states, or countries.**

- Q133. (Pg. 224) *Should we provide a safe harbor for Scope 3 emissions disclosure, as proposed?* **No, there is no need for a safe harbor.**

- Q135 (Pg. 243). *Should we require accelerated filers and large accelerated filers to obtain an attestation report covering their Scope 1 and Scope 2 emissions disclosure, as proposed? Should we require accelerated filers and large accelerated filers to obtain an attestation report covering other aspects of their climate-related disclosures beyond Scope 1 and 2 emissions?* **Yes, but the timeline should be accelerated with limited disclosure required in the first reporting year and reasonable assurance required in the second reporting year.**

- Q168. (Pg. 284) *Should we require a registrant to disclose whether it has set any targets related to the reduction of GHG emissions, as proposed?* **Yes**. *Should we also require a registrant to disclose whether it has set any other climate-related target or goal, e.g., regarding energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products, in line with anticipated regulatory requirements, market constraints, or other goals, as proposed?* **Yes**.

- Q169. (Pg. 285) *Should we require a registrant, when disclosing its targets or goals, to disclose:*
    - *The scope of activities and emissions included in the target;*
    - *The unit of measurement, including whether the target is absolute or intensity based;*
    - *The defined time horizon by which the target is intended to be achieved, and whether the time horizon is consistent with one or more goals established by a climate-related treaty, law, regulation, or organization;*
    - *The defined baseline time period and baseline emissions against which progress will be tracked with a consistent base year set for multiple targets;*
    - *Any intervening targets set by the registrant; and*
    - *How it intends to meet its targets or goals, each as proposed?* **Yes**.

- Q171. (Pg. 286) *Should we require a registrant, when disclosing its targets or goals, to disclose any data that indicates whether the registrant is making progress towards meeting the target and how such progress has been achieved, as proposed?* **Yes**.

Contact: Alex Martin (alex@ourfinancialsecurity.org) for more information, resources, or discussion about these and other topics related to the SEC proposal and climate disclosure.