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Environmental Alert

SEC Proposes New Rules for Climate-Related Disclosures

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In a push for increased transparency for investors, on March 21, 2022, the U.S. Securities and Exchange Commission (SEC) proposed new regulations that would require domestic and foreign companies to include information on climate-related risks - including their direct and indirect greenhouse gas (GHG) emissions - in their SEC registration statements and annual reports. The rules would also require the companies to disclose climate-related financial statement metrics in their audited financial statements.

The new rules would apply to companies with annual reporting obligations under the Securities Exchange Act Sections 13(a) or 15(d) and those filing a Securities Act or Securities Exchange Act registration statement.

Under the rules, reportable climate-related risks would include risks that are reasonably likely to have a material impact on the company's business, results of operations, or financial condition. In all instances, this includes the company's direct GHG emissions (Scope 1) and indirect GHG emissions from purchased energy (Scope 2). For some companies, it also includes all other indirect GHG emissions not accounted for in Scope 2 emissions (Scope 3) where those emissions are material or the company has set a GHG emissions reduction goal that includes its Scope 3 emissions. Smaller reporting companies, as defined under SEC rules, would be exempt from the Scope 3 emissions disclosure requirements. The SEC has stated that the new GHG emissions disclosures will allow investors to better assess the company's climate-related risks and transition risks.

The regulations would require a company to disclose information including:

- Oversight and governance of climate-related risks and risk management processes;
- How climate-related risks have had or are likely to have a material impact on its business and consolidated financial statements;
- How climate-related risks have affected or are likely to affect the company's strategy, business model, and outlook;
- The process for identifying, assessing and managing climate-related risks;
- The impact of climate-related events and transition activities on the line items of its consolidated financial statements; and
- Climate-related targets or goals, and transition plan, if any.

The SEC cited investors' need for "consistent, comparable, and reliable" information as a basis for its new rules, explaining that climate-related risks and disclosures can increasingly have an impact on a company's financial performance or market position. The SEC expects that climate-related disclosures can be material to investors in making investment and voting decisions.

For companies that have already taken certain climate-related actions, such as those who have publicly set climate-related targets or goals (i.e., to address energy usage, water usage, conservation or ecosystem restoration), the proposed rules would require further disclosures to allow investors to understand the company's management of climate risks. Additional disclosures would include the scope of activities and emissions included in the target, the timeline by which it is intended to be achieved, any interim targets set by the company, and how the company intends to meet the target or goal.

Under the new regulations, accelerated filers and large accelerated filers (substantial issuers of securities as defined by SEC regulations) would be required to include an attestation report from an independent service provider covering disclosures for direct GHG emissions (Scope 1) and indirect GHG emissions from purchased energy (Scope 2) to ensure the reliability of those disclosures. A company may also choose to include disclosures about its climate-related opportunities.

The SEC noted that the proposed disclosures are similar to those required under other widely accepted disclosure frameworks like the Task Force on Climate-Related Financial Disclosures and the Greenhouse Gas Protocol. However, the new disclosure requirements are significantly more prescriptive than those included in the SEC's "Commission Guidance Regarding Disclosure Related to Climate Change" published in 2010 ("2010 Guidance"). The 2010 Guidance identified certain climate-related issues that companies may be required to consider in making their disclosures, including the impact of climate-related legislation or regulations, international agreements, business trends, and the physical impacts of climate change. The new rules would significantly expand upon that guidance.

The proposed rules would include a phase-in period for all companies based on the company's size and filing history. Most companies could expect compliance dates ranging from 2024-2026 for filings made for the preceding fiscal year (2023-2025). Companies subject to Scope-3 emissions disclosures would receive an additional one-year phase-in period for the disclosure of their Scope 3 emissions as well as a safe harbor for Scope 3 emissions disclosure from select forms of liability under the Federal securities laws.

Public comments on the proposed regulations will be due by the later of May 20, 2022 or thirty days after the rules are published in the Federal Register.

The proposed rules can be found here.

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This Environmental Alert is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact David Rockman at 412.566.1999 or drockman@eckertseamans.com, or Jessica Rosenblatt at 412.566.1911 or jrosenblatt@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.