

Updated SEC Expectations on Climate Disclosures

The SEC recently stayed its March 2024 final rule, [The Enhancement and Standardization of Climate-Related Disclosures for Investors](#), to avoid regulatory uncertainty for companies that might have been subject to the rule as litigation proceeds. The SEC has stayed its recent climate rule but not its expectations on climate disclosure by issuers; the legal filing explicitly does not stay the SEC 2010 climate guidance.

How to Proceed

While the stay may reduce a sense of urgency with adopting the SEC climate rule, public companies should not become complacent:

- The SEC staff is likely to continue issuing comment letters on companies' current climate-related disclosures.
- Public companies also may be subject to climate disclosure requirements in other jurisdictions, such as the European Union or California.
- Investors are likely to continue demands for more detailed and comparable climate-related disclosures.

While the status of the SEC's final rule winds through the legal process, public companies should consider the following:

- Understand the requirements for each applicable regulatory framework.
- Begin/continue a gap analysis against existing voluntary climate reporting disclosures.
- Audit committees should weigh their material financial impacts of climate-related risks and what new corporate governance and risk management policies and procedures may be needed.
- Talk with your auditors regarding their plans for complying with potential financial statement disclosures and the design and testing of new or modified internal controls.
- Review public climate-related statements to help ensure consistency with their SEC filings.

2010 SEC Guidance

The [2010 document](#) highlights the following existing requirements of Regulation S-K and S-X that may require disclosure related to climate change. According to the **Federal Register**:

- **Description of business.** Reg S-X Item 101 expressly requires disclosure regarding the costs of complying with environmental laws.
- **Legal proceedings.** Reg S-K Item 103 notes the federal, state, or local provisions that have been enacted regulating the environmental discharge or protecting the environment will not be excluded from disclosure under the "ordinary routine litigation incidental to the business" safe harbor and must be described if:
 - Such proceeding is material to the registrant's business or financial condition.
 - Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges, or charges to income and the amount exceeds 10% of the registrant's current assets on a consolidated basis.
 - A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no

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monetary sanctions, or in monetary sanctions—exclusive of interest and costs—of less than \$100,000.

- **Risk factors.** Reg S-K Item 503(c) requires a discussion of the most significant factors that make an investment in the registrant speculative or risky. Item 503(c) specifies that risk factor disclosure should clearly state the risk and specify how the particular risk affects the registrant; registrants should not present risks that could apply to any issuer or any offering. Registrants should consider specific risks they face because of climate change legislation or regulation and avoid generic risk factor disclosure that could apply to any company. For example, registrants that are particularly sensitive to greenhouse gas regulation, *e.g.*, the energy sector, may face significantly different risks from climate change regulation compared to registrants that currently are reliant on products that emit greenhouse gases, *e.g.*, the transportation sector.

According to the **Federal Register**, registrants whose businesses may be vulnerable to severe weather or climate-related events should consider disclosing material risks of—or consequences from—such events in their publicly filed disclosure documents. Significant physical effects of climate change, such as effects on the severity of weather, *e.g.*, floods or hurricanes, sea levels, the arability of farmland, and water availability and quality, have the potential to affect a registrant’s operations and results. Possible consequences of severe weather could include:

- For registrants with operations concentrated on coastlines, property damage and disruptions to operations, including manufacturing operations or the transport of manufactured products
 - Indirect financial and operational effects from disruptions to the operations of major customers or suppliers from severe weather, such as hurricanes or floods
 - Increased insurance claims and liabilities for insurance and reinsurance companies
 - Decreased agricultural production capacity in areas affected by drought or other weather-related changes
 - Increased insurance premiums and deductibles, or a decrease in the availability of coverage, for registrants with plants or operations in areas subject to severe weather
- **Management’s discussion & analysis (MD&A).** As noted in the **Federal Register**, Reg S-K Item 303 requires that disclosure decisions concerning trends, demands, commitments, events, and uncertainties generally should involve the:
 - Consideration of financial, operational, and other information known to the registrant
 - Identification, based on this information, of known trends and uncertainties
 - Assessment of whether these trends and uncertainties will have—or are reasonably likely to have—a material effect on the registrant’s liquidity, capital resources, or results of operations

Registrants also should consider—and disclose when material—the effect on their business of treaties or international accords related to climate change. Registrants whose businesses are reasonably likely to be affected by such agreements should monitor the progress of potential agreements and consider materiality and the above principles.

SEC Requests

The SEC staff regularly compares climate-related statements in company filings with climate-related information made public by the company on its website or in other reports or publications. Before the final rule was issued, the SEC [published](#) a list of requests that SEC staff sent to chief financial officers on the 2010 guidance.¹ The requests are presented in the form of comments on companies’ periodic SEC filings, such as quarterly and annual reports.

¹“SEC Asks Dozens of Companies for More Climate Disclosures,” *wsj.com*, September 21, 2021.

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According to the SEC, the requests focused on impacts that are expected to be important to a reasonable investor, including:

- General
 - Explanation for providing more information about climate change in corporate social-responsibility reports than in SEC filings
- Risk Factors
 - Disclose the material effects of transition risks related to climate change that may affect your business, financial condition, and results of operations, such as policy and regulatory changes that could impose operational and compliance burdens, market trends that may alter business opportunities, credit risks, or technological changes
 - Disclose any material litigation risks related to climate change and explain the potential impact to the company
- MD&A
 - Any significant developments in federal and state legislation and regulation and international accords regarding climate change not discussed in the SEC filing. Identify material pending or existing climate change-related legislation, regulations, and international accords and describe any material effect on your business, financial condition, and results of operations
 - Identify and quantify past or future capital expenditures for climate-related projects
 - Discuss the indirect impact of climate-related regulation or business trends, such as the following:
 - Lower demand for goods and services that produce significant greenhouse gas emissions
 - Increased demand for goods that result in lower emissions than competing products
 - Increased competition to develop innovative new products that result in lower emissions
 - Increased demand for generation and transmission of energy from alternative energy sources
 - Any anticipated reputational risks resulting from operations or products that produce material greenhouse gas emissions
 - If material, discuss the physical effects of climate change on operations and results, which may include the following items:
 - Severity of weather, such as floods, hurricanes, sea levels, arability of farmland, extreme fires, and water availability and quality
 - Quantification of material weather-related damages to your property or operations
 - Potential for indirect weather-related impacts that have affected or may affect major customers or suppliers
 - Decreased agricultural production capacity in areas affected by drought or other weather-related changes
 - Any weather-related impacts on the cost or availability of insurance
 - Quantify any material increased compliance costs related to climate change
 - If material, provide disclosure about the purchase or sale of carbon credits or offsets and any material effects on the business, financial condition, and results of operations

The SEC has not revealed which companies have received the letters, but is focused on agriculture, oil and gas, banking, real estate, and trucking industries.

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Additional Resources

[SEC's Climate Disclosure Rule \(Stayed\)](#)

[Preparing for the SEC's Climate Disclosure Rules](#)

Conclusion

Forvis Mazars will continue to follow this developing situation. For some entities, adoption of these climate disclosures will be complex and likely will require significant hours to implement correctly. Forvis Mazars can help educate your team, provide tools to accelerate implementation, and assist with analysis of internal controls, greenhouse gas emissions, and attestation. If you have questions or need assistance, please reach out to one of our professionals.

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