LEGAL UPDATES

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SEC Adopts Final Climate-Related Disclosure Rules

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On March 6, 2024, the Securities and Exchange Commission (SEC) adopted climate disclosure rules which will require registrants to disclose detailed new climate-related disclosures in annual reports and registration statements. This rule comes almost two years after the SEC first issued proposed climate-related disclosure rules on March 21, 2022. The final rules have been scaled back from the original proposed rules in several respects, including dropping the requirement for companies to include Scope 3 emissions reporting.

The rules amend Regulation S-K and Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934. The Regulation S-K mandated climate-related disclosures must be provided either in a separate, appropriately captioned section of a company's registration statement or annual report or in another appropriate section of the filing, such as Risk Factors, Description of Business, or Management's Discussion and Analysis, or, alternatively, by incorporating such disclosure by reference from another SEC filing.

The final rules will require a registrant to disclose, among other things:

climate-related risks that have had or are reasonably likely to have a material impact on the registrant's business strategy, results of operations, or financial condition;

actual and potential material impacts of any identified climate-related risks on the registrant's strategy, business model, and outlook;

if, as part of its strategy, a registrant has undertaken activities to mitigate or adapt to a material climate-related risk, a quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions that directly result from such mitigation or adaptation activities;

specified disclosures regarding a registrant's activities, if any, to mitigate or adapt to a material climate-related risk including the use, if any, of transition plans, scenario analysis, or internal carbon prices;

any oversight by the board of directors of climate-related risks and any role by management in assessing and managing the registrant's material climate-related risks;

any processes the registrant has for identifying, assessing, and managing material climate-related risks and, if the registrant is managing those risks, whether and how any such processes are integrated into the registrant's overall risk management system or processes;

information about a registrant's climate-related targets or goals, if any, that have materially affected or are reasonably likely to materially affect the registrant's business, results of operations, or financial condition (including disclosure of material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or actions taken to make progress toward meeting such target or goal);

for large accelerated filers (LAFs) and accelerated filers (AFs) that are not otherwise exempt, information about material Scope 1 emissions and/or Scope 2 emissions;

for those required to disclose Scope 1 and/or Scope 2 emissions, an assurance report at the limited assurance level, which, for an LAF, following an additional transition period, will be at the reasonable assurance level;

the capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, subject to applicable one percent and de minimis disclosure thresholds, disclosed in a note to the financial statements;

the capitalized costs, expenditures expensed, and losses related to carbon offsets and renewable energy credits or certificates if used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals, disclosed in a note to the financial statements; and if the estimates and assumptions a registrant uses to produce the financial statements were materially impacted by risks and uncertainties associated with severe weather events and other natural conditions or any disclosed climate-related targets or transition plans, a qualitative description of how the development of such estimates and assumptions was impacted, disclosed in a note to the financial statements.

The SEC's full adopting release related to these rules can be found here, and a related summary Fact Sheet from the SEC is available here. The final rules will become effective 60 days after publication in the Federal Register. The final rules will be phased in for all registrants, with the compliance date dependent upon the status of the registrant (as an LAF, an AF, or a non-accelerated filer, smaller reporting company, or emerging growth company) and the content of the disclosure. Compliance with the final rules will begin with certain requirements for LAFs beginning with the first annual report on Form 10-K for fiscal years beginning on or after January 1, 2025, and extending out to fiscal year 2033 for reasonable assurance on the attestation reports for LAFs.

Contact us

Husch Blackwell's Securities & Corporate Governance team will continue to monitor these changes and their implications. Should you have any questions, please contact Craig Adoor, Steve Barrett, Robert Joseph, Victoria Sitz, Andrew Spector, or your Husch Blackwell attorney.