March 20, 2024

TO:	**Interested Parties**
FROM:	**Sierra Club, Americans for Financial Reform Education Fund, Public Citizen, Sunrise Project, and Carbon Tracker**
RE:	**Preliminary Analysis of SEC's Climate Risk Disclosure Rule**

Please send questions and feedback to John Kostyack at john@kostyackstrategies.com. For a simplified version of this assessment, please see Appendix A (Scoring Sheet) on page 14.

On March 6, 2024, the SEC issued its long-awaited rule requiring registered companies (registrants) to provide climate risk disclosures in annual reports and registration statements. Disclosures are now set to begin in 2026 if efforts to delay or block implementation in Congress and the courts are unsuccessful.

The SEC final rule removes or weakens a number of proposed provisions that had been strongly supported by investor comments. Nonetheless, the rule contains numerous decision-useful items that will help investors evaluate companies' handling of climate risks, but in most cases only if the registrant determines they are material. This preliminary analysis identifies what was removed, what remains, and what changed, and offers our perspectives on next steps.

Assessing the rule as a whole, and based on the views of investors, we conclude that although the final rule does not go far enough, it is likely a net-positive for investors and the functioning of capital markets. The magnitude of benefit will depend on upcoming guidance and other implementation steps. Today's markets are plagued with inconsistent and unreliable climate risk disclosures by public companies, to the detriment of investors and the efficient allocation of capital. In particular, carbon-intensive companies often downplay or conceal the impact of climate risks on their financial condition and business outlook, unfairly drawing investors and capital away from the enterprises that are more resilient to climate change and more prepared for the decarbonization of the economy. The SEC has work remaining to address this market failure and must now prioritize effective implementation of its new rule through interpretive guidance, compliance monitoring and enforcement.

In addition to its widely-publicized removal of proposed Scope 3 emissions disclosures, the final rule replaces numerous bright-line, mandatory standards that were included in the proposed rule with materiality qualifiers that empower registrants to decide what must be disclosed. This discretion is given to registrants on a host of critical issues, including disclosures on Scope 1 and 2 emissions, climate targets, and the impacts of the transition on financial results.

Fundamental to securities law is investor protection and SEC deference to investors to determine what information they need. In comments on the 2021 Request for Information and again in response to the March 2022 proposed rule, investors expressed strong support for promulgating a rule that would rectify the failures of the SEC's 2010 climate risk disclosure guidance in eliciting needed information from registrants. As then-Commissioner Allison Herren Lee stated in 2021, this required shifting away from

the guidance's broad-based approach to materiality to a rule with greater specificity.[1] It is longstanding agency practice to honor such investor input and promulgate disclosure rules with bright-line standards based on demonstrated need. The appropriateness of this approach in the case of the climate risk disclosure rule was clearly perceived by a majority of Commissioners when they voted to proceed with the proposed rule in March 2022.

Although issuing new bright-line standards may not be feasible at this moment, the SEC nonetheless can limit abuses of the materiality qualifier and protect investors by issuing follow up guidance on materiality determinations. Staff Accounting Bulletin No. 99 has some usefulness, but greater specificity about materiality determinations in the context of climate risk disclosures will be needed. In the absence of such detailed materiality guidance, investors may face continuation of the inconsistent and unreliable disclosures that were made pursuant to the 2010 climate risk guidance.

Investors and advocates for improved climate risk disclosures also have important work to do to help ensure effective rule implementation, including identifying disclosure gaps resulting from the weakening of the rule, any oversights in crafting the rule and any important market developments that emerge during rule implementation.

We hope that this preliminary analysis is a useful beginning to the process of identifying priority needs. We welcome and encourage feedback and look forward to providing updated analyses and collaborating with others working to improve transparency around climate risk.

1. Emissions Disclosures

Scope 3 emissions disclosures

In the **proposal**, disclosure of Scope 3 greenhouse gas emissions was required of all registrants (except small reporting companies) if the registrant either (1) deemed them material, or (2) has set a GHG emissions target or goal that includes Scope 3 emissions. There was also a safe harbor for liability for Scope 3 emissions disclosed with a reasonable basis.

In the **final rule**, Scope 3 emission disclosures are omitted entirely.

Scope 1 & 2 emissions disclosures with a materiality qualifier

In the **proposal**, disclosure of Scopes 1 and 2 greenhouse gas emissions were required for all registrants, including small reporting companies.

[1] Living in a Material World: Myths and Misconceptions about "Materiality" (May 24, 2021) ("A disclosure system that lacks sufficient specificity and relies too heavily on a broad-based concept of materiality will fall short of eliciting information material to reasonable investors").

Under § 229.1505 of the **final rule**, only Large Accelerated Filers and Accelerated Filers[2] are subject to Scopes 1 and 2 greenhouse gas reporting, and disclosure of these emissions will be required only if a registrant deems them material. These disclosures can also be filed on a delayed basis in the second-fiscal-quarter quarterly filing (Form 10-Q), which are typically filed after proxy season, when most registrants hold their annual shareholder meetings.

The final rule preamble states also that "investors view information about a registrant's GHG emissions, including its Scopes 1 and 2 emissions, as a central measure and indicator of the registrant's exposure to transition risk as well as a useful tool for assessing its management of transition risk and understanding its progress towards a registrant's own climate-related targets or goals." The SEC justifies its decision to add a materiality qualifier based on compliance cost of a mandatory standard to registrants.

Scope 1 & 2 emissions disclosure attestations

In the **proposal**, Scopes 1 and 2 greenhouse gas emissions disclosure would require attestation by a third party at a limited (reasonable) assurance level for FY 2024 (FY 2026) for Large Accelerated Filers, and for FY 2025 (FY 2027) for Accelerated Filers.

In § 229.1506 of the **final rule**, if Scopes 1 and 2 greenhouse gas emissions are deemed material by the registrant, disclosure would require attestation by a third party at a limited assurance level for FY 2029 and reasonable assurance by FY 2033 for Large Accelerated Filers,[3] and only at a limited assurance level for FY 2031 for Accelerated Filers.[4] Additionally, filers that disclose greenhouse gas emissions with attestation must also provide the attestation report and any related disclosures in the same filing, including around the service provider providing the attestation report.

Both PCAOB-registered audit firms and other sustainability assurance firms and individuals can provide greenhouse gas attestation reports, as long as they fit certain criteria around independence, capabilities, and expertise.

---

[2] As defined by the SEC, Large Accelerated Filers are registrants with a public float of or greater than $700 million. Accelerated Filers are registrants with a public float between $75-700 million. Public float is "calculated by multiplying the number of the company's common shares held by non-affiliates by the market price."

[3] The final rule preamble provides the SEC's view of limited vs. reasonable assurance: "The primary difference between the two levels of assurance relates to the nature, timing, and extent of procedures required to obtain sufficient, appropriate evidence to support the limited assurance conclusion or reasonable assurance opinion. For example, in a limited assurance engagement, the procedures performed by attestation providers are generally limited to analytical procedures and inquiries, but in a reasonable assurance engagement, they are also required to perform risk assessment and detail testing procedures to respond to the assessed risk. However, the outcome of a reasonable assurance engagement results in positive assurance (e.g., the provider forms an opinion about whether the registrant's GHG emissions disclosures are in accordance with Item 1505 in all material respects) while the outcome of a limited assurance engagement results in negative assurance (e.g., the provider forms a conclusion about whether it is aware of any material modifications that should be made to the disclosures for it to be in accordance with Item 1505)."

[4] The rule generally extends the phase-in periods compared to the proposal. For more detail see the chart in Appendix B.

Gross emissions, emission intensity, emissions methodology and boundaries disclosed

In the **proposal**, all greenhouse gas emissions figures would be required to be disclosed in absolute terms, not including offsets, and in terms of intensity (per unit of economic activity value or production), along with a description of the methodology used, significant inputs, and significant assumptions. Organizational boundaries (e.g., those separating direct and indirect emissions) would also need to be set according to the boundaries used for the consolidated accounting group.

In § 229.1505 of the **final rule**, all greenhouse gas emissions figures would be required to be disclosed in absolute terms, not including offsets—but *not* in terms of intensity—along with a description of the methodology used, significant inputs, and significant assumptions. Organizational boundaries are now flexible if companies provide a description of any material discrepancies between the boundaries used for GHG reporting and the boundaries for the consolidated financials.

Preliminary Assessment of Greenhouse Gas Emissions Provisions

According to investors, GHG emission inventories are among the most important climate financial risk disclosures. Nearly all investors that commented on the proposal supported the Scopes 1, 2, and 3 greenhouse gas disclosure requirements as proposed, and 80 percent supported attestation for Scopes 1 and 2 GHGs.[5] Against the recommendation of investors, the final rule removed Scope 3 emissions and rolled back Scopes 1 and 2 from a mandatory to materiality-based standard, representing a fundamental shortcoming of the framework.

Despite these flaws, *gross* emissions reporting was maintained, which will be helpful to investors in tracking real emissions reductions regardless of the growth of a company, and thus determining whether companies are managing transition risk and fulfilling their emissions reductions commitments. Attestation requirements for Scopes 1 and 2 emissions, which improve reliability, were maintained for large companies but on a significantly delayed timeline (requirements commence between FY 2029 and FY 2033).

2. Financial Statement Disclosures

Audited financial statements included in SEC filings are where many investors look first in deciding whether and how to invest in, engage with, or divest from a company. Lenders, credit ratings agencies and other market participants likewise rely heavily on the financials in deciding whether and how to support companies' plans. Financial statements are presented according to well-understood accounting standards, thereby facilitating comparisons of companies, and are subject to a third-party audit, enhancing reliability.

Thus, carbon-intensive companies' broad failure to disclose the impact of transition risks and emissions reduction targets on their financials, despite the well-demonstrated materiality of these risks and targets to investors and other market participants, represents a large-scale market failure warranting priority attention from the SEC. The climate-exacerbated insurance crisis unfolding also suggests that physical climate risks have not been adequately disclosed in the financials or priced into markets, and many

[5] Ceres, October 2022: Analysis shows that investors strongly support the SEC's proposed climate disclosure rule

non-carbon-intensive companies are exposed. We first discuss the Reg S-X provisions concerning transition risks and targets and then turn to those relating to physical risks.

Reg S-X Requirements Regarding Transition Risks and Targets

The **proposal** contained several important transition-related disclosure requirements in companies' financial statements:

- Footnote disclosures of the impacts of transition activities on financial results;
- Footnote disclosures of two types of expenditures, those to mitigate exposure to transition risks and those related to meeting emissions reduction targets;
- Disclosures of how financial estimates and assumptions were impacted by known and potential impacts from the transition to a lower carbon economy or any disclosed climate-related targets; and
- Disclosures of how transition risks identified in the Form 10-K are reflected in the transition-related impacts, expenditures and estimates and assumptions in the financials.

Registrants could not avoid the footnote disclosures by deeming these impacts and expenditures immaterial to investors; disclosure would be mandatory if the specified values exceeded bright-line dollar thresholds.

In § 210.14-02 of the **final rule**, the SEC scales back significantly these proposed transition-related disclosures, while moving some requirements to the sections governing Reg S-K disclosures:

- It eliminates entirely proposed requirements to disclose impacts of the transition on the financial results and how the Form 10-K risk disclosures are reflected in the financials. In the Reg S-K amendments discussed in section 3 below, registrants will now be required to disclose the impact of these risks and impacts on the registrant's business outlook in the Form 10-K;
- It likewise abandons mandatory financial statement disclosures of transition-related expenditures, with the exception of carbon offsets and Renewable Energy Credits (RECs), discussed in section 8 below. In the Reg S-K amendments discussed in section 3 below, registrants will now be required to disclose expenditures related to the transition in the Form 10-K;
- The disclosures regarding how financial estimates and assumptions are affected by transition-related factors are scaled back. They no longer must include potential impacts from the transition to a lower carbon economy; their focus is now solely on how they are affected by any disclosed climate-related targets or transition plans. Similarly, as discussed in section 5 below, registrants also will be required only to disclose in the Form 10-K the impacts of any disclosed climate-related targets or goals, or actions toward meeting those targets or goals, on estimates and assumptions.

Reg S-X Requirements Regarding Severe Weather Events and Other Natural Conditions

Consistent with the March 2022 proposal, in § 210.14-02 of the final rule, the SEC addresses physical climate risk disclosure in the financials by requiring registrants to make financial statement disclosures

regarding “severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise” and to disclose the policy decisions made to calculate the required disclosures. Using this proxy for physical climate risk, the SEC relieves registrants of needing to attribute any past or anticipated future physical event or condition to climate change.

Registrants are required to disclose how these impacts affect the financials in four important ways, with different bright-line thresholds than those proposed in March 2022, which focused on line-item totals. First, if the aggregate amount of expenditures expensed as incurred and losses from these events and conditions is 1% or more of the absolute value of income or loss before income tax expense or benefit for the fiscal year - but not less than $100,000 - expenditures and losses must be disclosed. Second, if the aggregate amount of the absolute value of capitalized costs and charges associated with events and conditions is 1% or more of the absolute value of stockholders’ equity or deficit at the end of the fiscal year - but not less than $500,000 - they must be disclosed. Third, a registrant must separately disclose the aggregate amount of any recoveries[6] recognized during the fiscal year as a result of these events and conditions. Finally, registrants are required to disclose if and how estimates and assumptions used to produce the financials were materially affected by risks and uncertainties associated with these events and conditions.

Preliminary Assessment

The rule’s bright-line standards for financial statement disclosures of expenditures, losses, capital costs and charges, and other impacts of severe weather and other natural conditions are likely to produce significant decision-useful information. For example, disclosures relating to financial recoveries associated with severe weather and other natural conditions will be helpful for investors and other market participants to evaluate the adequacy of a company’s insurance coverage of physical climate risks.

In contrast, the SEC’s scaled-back requirements for transition-related disclosures in the financials will likely produce less useful information than what was proposed. The disclosures about offsets and RECs will certainly help investors understand registrants’ involvement in these markets (see section 8 below). Unfortunately, the final rule requires disclosures only about how estimates and assumptions are affected by disclosed targets or transition plans, but not about how they are affected by transition risks broadly or the “transition to a lower carbon economy.” This is problematic, because many companies lack targets or transition plans, or if they have such plans, they are insufficient to address the full range of transition risks facing registrants.

Investors have demonstrated a critical need to understand the impact of transition risks on registrants’ financial results, including any estimates and assumptions made in quantifying this impact. For example, with the rapid expansion of renewable electricity and the electrification of key sectors such as automobiles and steel manufacturing, companies with carbon-intensive assets such as oil reserves and coal-fired blast furnaces will likely need to reevaluate the assumptions they are making about the useful lives and carrying values of those assets. Under the final rule, registrants without targets or transition plans are rewarded for this inaction by being relieved of any obligation to disclose whether and how those

[6] Recoveries refers largely to the recuperation of financial costs due to severe weather events or natural conditions. The SEC anticipates this will mostly be insurance proceeds. See Final rule release at page 481.

assumptions were reevaluated. By abandoning its proposals to require disclosure of the potential impacts of transition risks on estimates and assumptions and key results in the audited financials, the SEC missed an important opportunity to improve transparency to investors about material climate risks.

The new Reg S-K disclosures on strategy, transition plans and plans to achieve targets and goals (discussed in sections 3 and 5) will provide some transparency. However, these required disclosures are not as comprehensive as those that had been proposed for Reg S-X. Moreover, shifting key disclosures from Reg S-X to Reg S-K means that they will lack the generally higher level of comparability and reliability that comes with inclusion in the audited financials.

3. Impacts of Climate Risks to Strategy

In § 229.1502 of the **final rule**, registrants are required to disclose the following in the Form 10-K:

(a) Any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations, or financial condition;
(b) The actual and potential material impacts of any climate-related risk identified in response to paragraph (a) of this section on the registrant's strategy, business model, and outlook;
(c) Whether and how the registrant considers any impacts described in response to paragraph (b) of this section as part of its strategy, financial planning, and capital allocation; and
(d) How any climate-related risks described in response to paragraph (a) of this section have materially impacted or are reasonably likely to materially impact the registrant's business, results of operations, or financial condition. (This subsection further requires registrants to "describe quantitatively and qualitatively the material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from activities disclosed.")

Preliminary Assessment

These items will likely produce abundant decision-useful information about how companies are assessing and managing climate risks, including information about expenditures mitigating or adapting to climate risks. The required financial data in Form 10-K disclosures, which go beyond the proposed rule's Reg S-K provisions, will partially substitute for those removed from the financial statement disclosures originally proposed for Reg S-X, albeit with less comparability and reliability. The SEC could improve comparability and reliability for investors by issuing guidance on how transition risk impacts on financial results and transition-related expenditures should be quantified.

Unfortunately, changes to § 229.1502 between the proposed and final rule could undercut the value of quantitative disclosures about the impacts of climate risks to business strategy, financial planning, and capital allocation. The SEC removed language in proposed subsection (c) calling for "forward-looking disclosures" on these topics, citing complaints from the American Petroleum Institute, the Chamber of Commerce and others about the "overly prescriptive" nature of this requirement. At a time when market

analysts are projecting significant reductions in demand for fossil-based energy in the coming years and decades, and with concerns mounting over whether inflated valuations of carbon-intensive assets in companies' financial statements are giving rise to a "carbon bubble," the SEC unwisely leaves it to registrants to decide whether forward-looking disclosures are warranted. Guidance will be needed to improve transparency and reliability in this area.

Another unfortunate change to the Form 10-K disclosures about transition risk impacts to financial results is the revised definition of climate-related risks. In the final rule, the SEC abandoned the proposal's required disclosure of these risks to the registrant's value chains, asserting this was necessary to reduce the burden on registrants. Thus, a value chain impact will only be disclosed to investors if the registrant decides it is likely to materially impact its business, results of operations, or financial condition. Just as with the value chain (Scope 3) emissions disclosures that were removed in crafting the final rule, disclosures of transition risk impacts may lack completeness due to the flexibility given to registrants in choosing whether to disclose value chain risks.

4. Targets and Goals

§ 229.1504 of the final rule narrows the required disclosures on climate-related targets and goals, departing from the proposal's requirement that any climate-related target and goal be disclosed and instead requiring reporting only if registrants determine it "has materially affected or is reasonably likely to materially affect the registrants' business, results of operations, or financial condition." The reporting requirement applies to all such targets and goals, regardless of whether publicly announced and regardless of whether formally adopted by the board, and not just those with greenhouse gas emissions as the metric. The final rule removes the requirement in the proposal to disclose interim targets, noting in the preamble that "if a registrant has set an interim target that is material, it will likely be included in the registrant's discussion of its plan to achieve its targets or goals."

If a registrant company determines that its climate-related target or goal is material, the rule requires disclosure of "any additional information or explanation necessary to an understanding of the material impact." This includes "as applicable": scope of activities covered; unit of measurement; the time horizon and whether it is based on one or more goals established by a climate-related treaty, law, regulation, policy, or organization; baseline time period; how progress will be measured; and a "qualitative description of how the registrant intends to meet its climate-related targets or goals." This description of the plan to meet the targets or goals is further discussed in section 5 below.

Preliminary Assessment

The rule preamble explains that the narrowing of required disclosures of climate-related targets and goals to those that are deemed by registrants to be material is intended to avoid mandatory disclosure of targets and goals meant for preliminary, internal planning purposes and therefore of limited usefulness to investors. It would have been preferable for the SEC to specifically exclude from disclosure targets and goals that are preliminary and internal without opening the door to potential non-disclosure of targets and goals that have been approved by management. Guidance clarifying that the latter type of targets and goals are presumptively material would help avoid potential abuses of the materiality qualifier.

5. Transition Plans, Plans to Achieve Targets and Goals, and Progress Reports

The final rule calls for descriptions of, and progress reports on, transition-related plans and plans to achieve targets and goals. The following is a summary of the required disclosures for each of these types of plans.

Transition Plans with Progress Reports

§ 229.1502 (e) states that if a registrant has adopted "a transition plan to manage a material transition risk," it must describe the plan. § 229.1507 provides a definition of the plan: "*Transition plan* means a registrant's strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations." The rule contains no requirements for describing the contents of this transition plan nor does it require registrants to adopt a transition plan.

§ 229.1502 (e) calls for an annual progress report on the transition plan in the annual report disclosure. The report must describe "any actions taken during the year under the plan, including how such actions have impacted the registrant's business, results of operations, or financial condition." It also must include "quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the plan." According to the rule preamble, "if individual expenditures do not appear to be material, registrants should consider whether overall expenditures related to actions taken under the plan are material in the aggregate and, if so, provide appropriate disclosure."

Plans to Achieve Targets and Goals with Progress Reports

As noted in section 4 above, § 229.1504 (b)(5) requires a "qualitative description of how the registrant intends to meet its climate-related targets or goals." Unlike with the transition plans, the rule (at § 229.1504(d)) provides some direction on what must be included in the plan description: upon an affirmative materiality determination, registrants must provide details on any use of carbon offsets and RECs. This requirement is further discussed in section 8 below.

§ 229.1504 (b)(5) calls for a detailed annual progress report on the plan to achieve targets and goals in the annual report disclosure. Progress reports must include:

- A description of the actions taken to achieve its targets or goals;
- A discussion of any material impacts to the registrant's business, results of operations, or financial condition as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal; and
- Quantitative and qualitative disclosure of any material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or the actions toward meeting the target or goal.

Preliminary Assessment

Although the final rule is not prescriptive about the contents of transition plans or plans to achieve targets and goals, its requirements for annual progress reports on these plans will likely produce detailed, decision-useful information. Particularly useful will be descriptions of any actions taken to implement the plans and the quantitative disclosures of (1) material expenditures on such actions, (2) material impacts of such actions on the registrant's financial estimates and assumptions, and (3) material impacts of the targets and goals themselves on financial estimates and assumptions.

As with other provisions with materiality qualifiers, guidance is needed from the SEC on what would constitute material expenditures and impacts.

The final rule also did not mandate disclosures on climate-related opportunities, though registrations may voluntarily disclose information on this subject.

6. Internal Carbon Price

In the **proposed rule**, a registrant that maintains an internal carbon price would be required to disclose certain information, including how it uses the price to evaluate and manage climate-related risks and the rationale for the selection of a particular carbon price.

In § 229.1507 of the **final rule**, registrants that use internal carbon pricing will be required to disclose certain information only if its use is "material to how it evaluates and manages a material climate-related risk." If more than one price is used in this manner, the registrant must provide disclosures for each price and the reasons for using different prices. Any disclosures must include the price per metric ton of CO2e, the total price, including "how the total price is estimated to change over the time periods," as applicable, and if the price used is materially different than the organizational boundaries used to calculate GHG emissions. The final rule removes requirements from the proposal for describing how the internal carbon price is used and providing a rationale for the choice of carbon price.

Preliminary Assessment

Internal carbon prices are important tools for companies in evaluating and managing transitions risk, and thus information about their use are extremely useful for investors. Although the removal of details regarding selection and use of the carbon price is a setback for investors, the remaining details called for by the rule will produce decision-useful information for investors if disclosed.

The new materiality qualifier creates a risk that some registrants using internal carbon prices will avoid disclosure by declaring them non-material. Guidance from the SEC offering examples of material and non-material internal carbon prices will be helpful in preventing such abuses.

7. Resilience of Business Strategy and Scenario Analysis

In the **proposed rule**, registrants would have been required to describe the resilience of its business strategy "in light of future changes in climate-related risks." They further would have been required to disclose any use of analytical tools, including but not limited to scenario analysis, to support this resilience as well as to assess the impact of climate-related risks on its business and consolidated financial statements. Both qualitative and quantitative information would have been required.

In § 229.1502(f) of the **final rule**, the requirement to describe the resilience of the business strategy in light of future changes in climate-related risks is eliminated. In addition, the duty to disclose any analytical tools other than scenario analysis is eliminated.

If a registrant uses scenario analysis to assess impacts to the business or financial condition and determines that a climate-related risk is likely to have a material impact, then it is required to disclose each scenario, accompanied by a "brief description of the parameters, assumptions, and analytical choices used, as well as the expected material impacts, including financial impacts, on the registrant under each such scenario." Requirements on quantitative disclosures are removed, with the SEC expressing concerns in the preamble that scenario analysis methodologies are still in their early stages.

Preliminary assessment

Given the uncertain trajectory of climate change, disclosure of any use of scenario analysis, and the underlying methodology, is critical for helping investors understand the range of possible outcomes being considered by registrants. The scenario analysis descriptions called for in the rule - such as parameters, assumptions, and analytical choices - will provide investors with important insights on future climate-related risks that registrants believe to be deserving of consideration and the rigor with which they consider those risks. Although the SEC does not mandate quantitative information as it would have under the proposed rule, it is difficult to imagine registrants not providing such information in disclosing parameters, assumptions and analytic choices.

Unfortunately the final rule does not offer investors insights into how registrants that do not use scenario analysis are considering the uncertain trajectory of climate change. In explaining its removal of the duty of registrants' to disclose the resiliency of their business strategy in light of climate-related risks, the SEC states that such information would likely be included in a scenario analysis disclosure. However, this type of information would be useful to investors from registrants that elect *not* to undertake scenario analysis, along with description of whatever analytical tools they are using.

8. Carbon Offsets and RECs

The final rule requires, subject to materiality qualifiers, a series of disclosures about the use of offsets and RECs as part of the registrant's Form 10-K and financial statements.

Under § 229.1504(d), registrants are required to disclose in the Form 10-K whether carbon offsets or RECs have been used as a "material" component of a registrant's plan to achieve climate-related targets or goals. If so, the registrant must disclose:

- the amount of carbon avoidance, reduction or removal represented by the offsets or the amount of generated renewable energy represented by the RECs;
- the nature and source of the offsets or RECs;
- a description and location of the underlying projects, any registries or other authentication of the offsets or RECs; and
- the cost of the offsets or RECs.

§ 210.14-02(e) requires that if registrants make this materiality finding, they must disclose the following amounts in the financial statements for the relevant fiscal year:

- the aggregate amount of carbon offsets and RECs expensed;
- the aggregate amount of capitalized carbon offsets and RECs recognized, the aggregate amount of losses incurred on the capitalized carbon offsets and RECs;
- the beginning and ending balances of the capitalized carbon offsets and RECs; and
- where the expenditures expensed, capitalized costs, and losses are presented in the income statement and the balance sheet.

Preliminary Assessment

Disclosures about the use of offsets and RECs produced pursuant to the final rule will be valuable in protecting investors from greenwashing and enabling them to assess registrants' handling of transition risks and progress toward publicly-disclosed climate-related targets or goals. In recent years, numerous scientific reviews and journalistic investigations have found that carbon offsets have often failed to deliver on their promised decarbonization benefits. This is especially true of voluntary carbon offsets, which are largely unregulated and have been used by many public companies to mislead investors and others, or at a minimum keep them in the dark, about the viability of their transition risk strategies and net-zero emissions reduction pledges.

Unfortunately, the addition of the materiality qualifier and the requirement that offsets be linked to achievement of a climate-related target or goal - neither of which were included in the proposed rule - raise questions about whether all registrants that use offsets as part of their climate risk management strategies will make the needed disclosures about them. Only half of large companies in the U.S. have net-zero targets; potentially among the other half are registrants with no targets or goals but nonetheless using offsets as part of their climate strategies. Even those with targets or goals may be tempted to make non-materiality determinations as a justification for electing not to disclose details about their use of offsets. Guidance from the SEC will be needed to clarify the treatment of offsets by registrants without targets or goals and to ensure that the materiality qualifier is not abused.

9. Governance and Risk Management

Under § 229.1501, a registrant is required to describe the board of directors' role in managing climate risks, including:

- Any board committee or subcommittee responsible for oversight;

- How the board or such committee or subcommittee is informed about such risks; and'
- How the board oversees progress against any target, goal or transition plan.

A registrant is also required by this section to describe management's role in assessing and managing material climate risks, including, as applicable:

- Whether and which management positions or committees are responsible and their relevant expertise;
- The processes by which the positions or committees assess and manage such risks; and
- Whether the positions or committees report information about such risks to the board or a board committee or subcommittee.

Under § 229.1503, a registrant is required to describe any of their processes for identifying, assessing, and managing material climate risks, including, as applicable, how it decides:

- Whether it has incurred or is reasonably likely to incur a material physical or transition risk;
- Whether to mitigate, accept, or adapt to the particular risk; and
- Priorities on whether to address the climate-related risk.

The registrant also must disclose whether and how any of these processes have been integrated into the registrant's overall risk management system or processes.

Preliminary Assessment

Although these requirements are slightly less prescriptive than the proposed rule (for example, the final rule removes the requirement in the proposed rule to describe climate-related expertise of board members), they will likely provide essential information to investors about registrants' climate risk management approaches.

10. Safe Harbors from Liability

§ 229.1507 of the rule extends the various statutory **s**afe harbors for forward-looking statements to disclosures of transition plans, scenario analyses, internal carbon prices and targets and goals.

Preliminary Assessment

This provision is essentially a restatement of the Private Securities Litigation Reform Act (PSLRA), which protects registrants for liability for false or misleading forward-looking statements, with the exception of those made with actual knowledge by that person that the statement was false or misleading. Because the final rule makes clear that it does not extend the safe harbors to historical facts, it provides certainty to registrants at no cost to investors and other market participants.

11. Environmental Justice and Community Consequences

The final rule does not explicitly require the disclosure of how climate change mitigation or adaptation affects communities or human capital management, as requested by several commenters. However, as noted in section 5, the final rule requires disclosures of plans and progress reports with respect to all material climate-related targets and goals. Thus, if community-related or worker-related impacts are addressed in such targets or goals or are affecting progress on such targets or goals, they will likely need to be disclosed.

12. Systemic Risk

In an October 2021 report, the Financial Stability Oversight Council (which includes the SEC) made clear that climate change poses risks to the stability of the financial system and that SEC-mandated climate risk disclosures would contribute to systemic risk reduction. The combined impact of the company-level climate risk disclosures and investor protections produced by the final rule indeed will help reduce climate risks to the financial system. However, climate-related systemic risk remains at unacceptable levels and additional work by the SEC to strengthen disclosures will play an important role in federal systemic risk reduction efforts.

Appendix A: Scoring Sheet

Category	***Final Rule***	***Preliminary Assessment of Final Rule*** ***(Green = Positive, Yellow = Mixed, Red = Negative)***
Scope 3 Emissions Disclosures	No Scope 3 emissions disclosures are required.	This is a retreat from the proposal, in which registrants would have been required to disclose Scope 3 emissions if they deem them material or if they have a public target that includes reducing Scope 3 emissions. According to investors, GHG emission inventories are among the most important climate financial risk disclosures. Nearly all investors that commented on the proposal supported the Scopes 1, 2, and 3 greenhouse gas disclosure requirements as proposed, and 80 percent supported attestation for Scopes 1 and 2 GHGs.
Scope 1 + 2 Emissions Disclosures: Materiality	Only Large Accelerated Filers and Accelerated Filers are subject to Scopes 1 and 2 greenhouse gas reporting, and disclosure will be required only if a registrant deems them material. These disclosures can also be filed on a delayed basis in the second-fiscal-quarter	This is a retreat from the proposal, in which disclosure of Scopes 1 and 2 greenhouse gas emissions would have been required for all registrants, including small reporting companies. Despite these flaws, gross emissions reporting was maintained, which will be helpful to investors in tracking real emissions reductions regardless of the growth of a company, and thus determining whether companies are managing transition risk and fulfilling their emissions reductions commitments.

	quarterly filing (Form 10-Q), which are typically filed after proxy season, when most registrants hold their annual shareholder meetings.	
Scope 1 + 2 Emissions Disclosures: Attestation	If Scopes 1 and 2 greenhouse gas emissions are deemed material by the registrant, disclosure would require attestation by a third party at a limited assurance level for FY 2029 and reasonable assurance by FY 2033 for Large Accelerated Filers, and only at a limited assurance level for FY 2031 for Accelerated Filers.	This is a retreat from the proposal, in which third-party attestation would be required for Scopes 1 and 2 greenhouse gas emissions disclosures at a limited (reasonable) assurance level for FY 2024 (FY 2026) for Large Accelerated Filers, and for FY 2025 (FY 2027) for Accelerated Filers. Attestation requirements for Scopes 1 and 2 emissions, which improve reliability, were maintained for large companies.
Financial Statement Disclosures - Transition Risks and Targets	Financial statements must include disclosures of how estimates and assumptions are affected by any disclosed climate-related targets or transition plans.	This is a significant retreat from the proposal. It eliminates proposed requirements to disclose impacts of the transition on the financial results and how the Form 10-K risk disclosures are reflected in the financials. It abandons mandatory financial statement disclosures of transition-related expenditures, with the exception of carbon offsets and Renewable Energy Credits (RECs). It no longer requires potential impacts on estimates and assumptions of the transition to a lower carbon economy. Some requirements are now found in Form 10-K (discussed below), which will produce useful (albeit less comparable and reliable) disclosures.
Financial Statement Disclosures - Severe Weather Events and Other Natural Conditions	Registrants are required to disclose in financial statements how impacts of severe weather and other natural conditions affect the financials in four important ways. expenditures expensed as incurred and losses; capitalized costs and charges; recoveries recognized; and if and how estimates and assumptions were materially affected by risks and uncertainties associated with these events and conditions.	These required disclosures are likely to produce significant decision-useful information. Although the final rule no longer has the line-item disclosures found in the proposal, it retains key bright-line thresholds rather than relying entirely on materiality qualifiers.

Impacts of Climate Risks to Strategy	The Form 10-K must include disclosure of any climate-related risks with a material impact on the registrant; impacts of these risks on strategy, business model, and outlook; and how registrants consider the risks. Registrants must describe quantitatively and qualitatively the material expenditures incurred and material impacts on financial estimates and assumptions.	These items will likely produce abundant decision-useful information about how companies are assessing and managing climate risks, including information about expenditures mitigating or adapting to climate risks.
Targets and Goals	Form 10-K disclosures are required only if registrants determine a target or goal "has materially affected or is reasonably likely to materially affect the registrants' business, results of operations, or financial condition." Disclosures must include any explanation necessary to an understanding of the material impact, including scope of activities covered and how progress will be measured.	This is a retreat from the proposed rule, which did not include the materiality qualifier. That said, the rule preamble suggests that the materiality qualifier was intended to avoid the need for disclosure of preliminary and internal targets and goals. Guidance could be issued to formalize this and ensure against avoidance of disclosures of targets and goals approved by management.
Transition Plans, Plans to Achieve Targets and Goals, and Progress Reports	If a registrant has adopted "a transition plan to manage a material transition risk," it must describe the plan. Registrants also must disclose a "qualitative description of how the registrant intends to meet its climate-related targets or goals." Annual progress reports are required for both types of plans.	Although the final rule is not prescriptive about the contents of transition plans or plans to achieve targets and goals, its requirements for annual progress reports on these plans will likely produce detailed, decision-useful information. Registrants are given discretion to decide which expenditures and impacts in plan implementation are material.

Internal Carbon Price	Registrants that use internal carbon pricing are required to disclose certain information if its use is “material to how it evaluates and manages a material climate-related risk.”	This is a retreat from the proposed rule, which did not include the materiality qualifier and which required details regarding selection and use of the carbon price that are not required in the final rule. However, the remaining details called for by the rule will produce decision-useful information for investors if disclosed.
Resilience of Business Strategy and Scenario Analysis	If a registrant uses scenario analysis to assess impacts to the business or financial condition and determines that a climate-related risk is likely to have a material impact, it is required to disclose each scenario, accompanied by a “brief description of the parameters, assumptions, and analytical choices used, as well as the expected material impacts, including financial impacts, on the registrant under each such scenario.”	This is a retreat from the proposed rule - it does not require disclosures regarding resilience of business strategy from registrants that elect not to undertake scenario analysis, such as descriptions of analytical tools they use in considering the uncertain trajectory of climate change. However, the required scenario analysis descriptions will provide investors with insights on future climate-related risks that registrants believe to be deserving of consideration and the rigor with which they consider those risks.
Carbon Offsets and RECs	Registrants are required to disclose in the Form 10-K whether carbon offsets or RECs have been used as a “material” component of a registrant’s plan to achieve climate-related targets or goals. If so, key details must be disclosed in both the Form 10-K and the financial statements.	This is a retreat from the proposed rule, which included neither a materiality determination nor a condition that offsets be linked to achievement of a climate-related target or goal before disclosure would be required. That said, disclosures produced will be valuable in protecting investors from greenwashing and enabling them to assess registrants’ handling of transition risks and progress toward publicly-disclosed climate-related targets or goals.
Governance and Risk Management	Registrants are required to describe the board of directors’ and management's role in managing climate risks, any processes for identifying, assessing, and managing these risks, and whether and how any of these processes have been integrated into their overall risk management system.	These disclosures will likely provide essential information to investors about registrants’ climate risk management approaches.

Safe Harbors from Liability	The rule extends the various statutory safe harbors for forward-looking statements to disclosures of transition plans, scenario analyses, internal carbon prices and targets and goals.	Because the final rule makes clear that it does not extend the safe harbors to historical facts, it provides certainty to registrants at no cost to investors and other market participants.
Environmental Justice and Community Consequences	The rule does not explicitly require the disclosure of how climate change mitigation or adaptation affects communities or human capital management	The rule requires disclosures of plans and progress reports with respect to all material climate-related targets and goals. Thus, if community-related or worker-related impacts are addressed in such targets or goals or are affecting progress on such targets or goals, they will likely need to be disclosed. However, the lack of specific requirements around climate-related community consequences or human capital management issues will likely lead to underreporting of these risks.

Appendix B: Timeline and Registrants Covered

Different disclosures and assurances in the rule are subject to different phase-ins for different registrants, meaning it will still be some time yet before we see all of the required disclosures outlined in the final rule. This SEC chart provides the timelines for different types of registrants.

Compliance Dates under the Final Rules[1]						
Registrant Type	**Disclosure and Financial Statement Effects Audit**		**GHG Emissions/Assurance**			**Electronic Tagging**
	All Reg. S-K and S-X disclosures, other than as noted in this table	*Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2)*	*Item 1505 (Scopes 1 and 2 GHG emissions)*	*Item 1506 - Limited Assurance*	*Item 1506 - Reasonabl e Assurance*	*Item 1508 - Inline XBRL tagging for subpart 1500[2]*
LAFs	FYB 2025	FYB 2026	FYB 2026	FYB 2029	FYB 2033	FYB 2026
AFs (other than SRCs and EGCs)	FYB 2026	FYB 2027	FYB 2028	FYB 2031	N/A	FYB 2026
SRCs, EGCs, and NAFs	FYB 2027	FYB 2028	N/A	N/A	N/A	FYB 2027
	1 As used in this chart, “FYB” refers to any fiscal year beginning in the calendar year listed. 2 Financial statement disclosures under Article 14 will be required to be tagged in accordance with existing rules pertaining to the tagging of financial statements. *See* Rule 405(b)(1)(i) of Regulation S-T.					

Source: SEC. “FACT SHEET: The Enhancement and Standardization of Climate-Related Disclosures: Final Rules.” March 6, 2024. Electronic tagging refers to requirements to “tag the proposed climate-related disclosures in a structured, machine-readable data language.” See Item 1508 of final rule.