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Proposed SEC Climate Disclosure Rules— Certain Key Implications for Financial Institutions

Financial Institutions Will Need to Navigate Expansive New Disclosure Requirements Capturing Financed Emissions and Scenario Analysis As Well As Other Legal Requirements Potentially Relevant To Their Climate Strategy

SUMMARY

On March 21, 2022, the Securities and Exchange Commission proposed, in a 510-page [release](#), climate-related disclosure rules for public companies. Although the proposed rules do not impose industry-specific requirements, in certain areas they would have a particularly significant impact on companies in the financial sector. In particular, the disclosure of Scope 3 greenhouse gas emissions (which capture financed emissions) and climate scenario analysis will likely be mandatory for many financial institutions. Voluntary climate-related transition plans, targets and goals, which many financial institutions have adopted or set, would also need to be disclosed under the proposed rules. In addition, financial institutions will need to consider their obligations under certain state, federal and non-U.S. laws and regulations that may also impact their climate strategy (e.g., fair access, fair lending or insurance underwriting requirements) as they navigate the new climate disclosure requirements.

Compliance with the proposed rules would be phased in (see [Appendix A](#) for disclosure compliance dates). Financial institutions that are large accelerated filers could be required to begin capturing emissions information (other than Scope 3 emissions) as early as January 2023 and Scope 3 emissions metrics as early as January 2024.

The public comment period was initially open until May 20, 2022, but on May 9, 2022, the SEC extended the end of the public comment period to June 17, 2022.¹ For a summary of the proposed rules and their

implications for U.S. public companies, see our publication [here](#) and listen to our webinar [here](#). For a summary of how the proposed rules would affect foreign private issuers, see our publication [here](#).

BACKGROUND

Existing climate disclosures across financial institutions vary, in part due to differences in regulatory regimes across jurisdictions.² In the United States, under the SEC's existing disclosure framework as set forth in its 2010 guidance on climate-related disclosures,³ disclosure of specific climate-related metrics is not mandatory. Rather, an institution is required to disclose information about potential or actual impacts of climate change to the extent material to investors. However, in response to demands from investors and other stakeholders, many banks, asset managers and insurance companies have voluntarily made climate disclosures in their sustainability or environmental, social and governance (ESG) reports or other public materials. Many of them have made net zero commitments with respect to their own operations or with respect to the combination of their operations and their financial activities.

More recently, investors and other stakeholders have increasingly focused on the disclosure of both greenhouse gas (GHG) emissions from financial institutions' own operations and energy use, and GHG emissions in connection with their lending, investment and underwriting businesses (so-called financed emissions). Disclosures of financed emissions, which typically represent the most significant portion of financial institutions' "overall" GHG emissions, present a unique challenge because the calculations or estimates of such emissions can be difficult to obtain on a reliable and timely basis. There is also currently a lack of consensus on standards and methodologies for calculating financed emissions, although certain standards and methodologies developed by financial sector participants, such as the Partnership for Carbon Accounting Financials (PCAF), are beginning to gain traction.⁴ The PCAF is also working with the Net-Zero Insurance Alliance to develop standards to measure and disclose GHG emissions of insurance and reinsurance underwriting portfolios (so-called insured emissions),⁵ although even the financial institutions that use the PCAF's standards and methodologies typically do so with institution-specific supplements and modifications.

U.S. financial regulators have indicated that they are increasingly focused on incorporating climate risks into their regulatory and supervisory practices. Under the Biden Administration's "whole-of-government" approach to addressing climate change,⁶ federal regulatory agencies—including those regulating financial institutions—have issued reports or proposed new guidance focused on climate-related financial risks, as well as their impact on financial institutions and the financial stability of the United States. For example, the Financial Stability Oversight Council (FSOC) issued a report in November 2021 identifying climate change as an "emerging threat to the financial stability of the United States" and recommending that its members accelerate their current climate-related efforts and take additional, coordinated actions to enhance the resiliency of the financial system to climate-related risks.⁷ The Commodities Futures Trading

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Commission⁸ also has warned that climate change threatens U.S. financial stability and has recommended increased disclosure of climate risks.

In the banking sector, the Office of the Comptroller of the Currency (OCC)⁹ and the Federal Deposit Insurance Corporation (FDIC)¹⁰ have released substantially the same proposed principles for climate-related financial risk management, which are designed to provide large banking institutions (those with over \$100 billion in total consolidated assets) subject to their respective regulation with a high-level framework for managing climate-related financial risks. In respective statements accompanying the proposed guidance, Acting Comptroller Michael J. Hsu and Acting FDIC Chairman Martin J. Gruenberg indicated that more detailed supervisory guidance would be forthcoming.¹¹ Although the Board of Governors of the Federal Reserve System (Federal Reserve) has not yet proposed similar principles, Federal Reserve Governor Lael Brainard (who has been nominated as Vice Chair) has stated that “the Federal Reserve is carefully considering the potential implications of climate-related risks for financial institutions and the financial system.”¹² The Federal Reserve’s Financial Stability Report has also outlined that “Federal Reserve supervisors expect banks to have systems in place that appropriately identify, measure, control, and monitor all of their material risks, which for many banks are likely to extend to climate risks.”¹³

In the insurance sector, the U.S. Treasury’s Federal Insurance Office (FIO) issued a request for information on its future work relating to climate-related financial risks. FIO indicated that, based on the feedback it receives, it would make recommendations on actions that can be taken by various insurance sector stakeholders to address climate-related financial risks.¹⁴ Fifteen state insurance regulators already require insurers licensed in the state and that write more than \$100 million in annual net written premium to disclose their climate-related risk assessment strategy via the Climate Risk Disclosure Survey promulgated by the National Association of Insurance Commissioners (NAIC).¹⁵ The New York Department of Financial Services (NYDFS) has released additional guidance for New York domestic insurers on managing the financial risks from climate change, outlining NYDFS’ specific expectations for insurers’ governance, business models and strategies, risk management, scenario analysis and public disclosure.¹⁶

In the asset management sector, the U.S. Department of Labor released a proposed rule in October 2021 that was intended to remove barriers to the ability of fiduciaries of plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) to consider climate and other ESG matters as factors when selecting investments and exercising shareholder rights.¹⁷

PROPOSED REQUIREMENTS HAVING PARTICULAR SIGNIFICANCE FOR FINANCIAL INSTITUTIONS

The SEC’s proposed climate disclosure rules consist of new Items 1500-1507 of Regulation S-K and a new Article 14 of Regulation S-X. New Items 1500-1507 of Regulation S-K, modeled in part on the Task Force on Climate-Related Financial Disclosures (TCFD) disclosure framework,¹⁸ would require an institution¹⁹ to disclose information about (1) its governance of climate-related risks; (2) climate-related impacts on its

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strategy, business model and outlook; (3) climate-related risk management; (4) GHG emissions metrics, both in absolute terms, not including offsets, and in terms of GHG intensity (defined as a ratio that expresses the impact of GHG emissions per unit of economic value or per unit of production); and (5) any internal carbon price or climate-related targets and goals. In addition, accelerated and large accelerated filers would be required to obtain attestation by an independent third party of certain of their GHG emissions metrics.

Proposed Article 14 of Regulation S-X would require institutions to include climate-related financial statement metrics (which would consist of disaggregated climate-related impacts on existing financial statement line items) and related disclosures in a note to their audited financial statements. These metrics would then be subject to audit by an independent registered public accounting firm and come within the scope of the institution's internal control over financial reporting.

The proposed rules, if adopted as proposed, would have particularly significant ramifications on the cost and complexity of SEC compliance for financial institutions because of their financed emissions.

1. *Scope 3 GHG Emissions*

The proposed rules would require disclosure of Scope 3 GHG emissions if these emissions are material or if an institution already has set a GHG emissions reduction target or goal that includes Scope 3 emissions. "Scope 3 emissions" would be defined as "all indirect GHG emissions not otherwise included in a registrant's Scope 2 emissions, which occur in the upstream and downstream activities of a registrant's value chain." The SEC has proposed to define "value chain" broadly as "the upstream and downstream activities related to a registrant's operations." Although the SEC did not propose a quantitative threshold for materiality with respect to Scope 3 emissions, it noted that some companies rely on, or support reliance on, a quantitative threshold, such as when Scope 3 emissions comprise or exceed 40 percent of a company's total GHG emissions, when assessing the materiality of Scope 3 emissions.²⁰

Consistent with the concepts developed by the GHG Protocol, an accounting and reporting standard for GHG emissions familiar to many registrants and investors,²¹ the proposed rules identify several categories of activities that can give rise to Scope 3 emissions. The identified categories are non-exclusive and include upstream activities such as purchased good or services, capital goods and employee business travel. Of most importance for financial institutions, the identified categories also include downstream activities such as "investments" (Category 15 of the GHG Protocol's Scope 3 emissions categories), which would capture financed emissions (*i.e.*, emissions from companies to which the financial institution provides debt or equity financing). If any upstream or downstream activities are significant when calculating Scope 3 emissions, the proposed rules would require identification of the categories and separate disclosure of Scope 3 emissions data for each.

The SEC has declined to mandate a particular methodology for financial institutions to use in calculating their Scope 3 emissions or financed emissions "in order to provide a financial sector registrant the flexibility to choose the methodology that best suits its particular portfolio and financing activities."²² However, the

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SEC's proposing release highlighted the methodology developed by the PCAF's Global GHG Accounting & Reporting Standard (PCAF Standard) as one that "complements the GHG Protocol and assists financial institutions in calculating their financed emissions,"²³ and requested comments on whether financial institutions should be required to follow the PCAF Standard when calculating their financed emissions.²⁴ Financial institutions would be required to disclose the methodology (e.g., the PCAF Standard or another standard) used to calculate their financed and other Scope 3 emissions.

Although the proposed rules do not refer to insured emissions, *i.e.*, GHG emissions of insurance and reinsurance underwriting portfolios, and the current GHG Protocol and PCAF Standard do not provide a methodology with respect to insured emissions, the PCAF is working with the Net-Zero Insurance Alliance to develop standards to measure and disclose insured emissions, which could impact how insurance and reinsurance companies calculate Scope 3 emissions relating to their underwriting portfolios. Whether or to what extent the proposed rules would apply to Scope 3 insured emissions, or how such emissions might be calculated, remains unclear in light of the developing work on the nature of, and potential approaches to measuring, insured emissions.

Scope 3 emission disclosures will likely be mandatory for financial institutions. Other than for insurers (which will likely have significant insured emissions), for many financial institutions, financed emissions almost certainly will constitute the majority of their GHG emissions. According to a report published by CDP, a climate nonprofit, GHG emissions associated with financial institutions' investing, lending and underwriting activities are on average over 700 times higher than their direct emissions, based on data from 84 financial institutions (including global asset managers, asset owners, insurers and banks) holding \$27 trillion of assets.²⁵ As a result, Scope 3 emissions (including financed emissions) are likely to be significant as a percentage of a financial institution's total GHG emissions, and therefore be required to be disclosed under the proposed rules in light of the commentary in the proposing release. In addition, many financial institutions have voluntarily set and publicly announced their GHG emissions reduction targets or goals, many of which include Scope 3 emissions reduction goals or targets. If a financial institution has set such goals or targets, it would be required to provide Scope 3 emissions disclosures, regardless of whether Scope 3 emissions are determined to be material.

Moreover, financial institutions would likely need to separately disclose their financed emissions as a significant category of Scope 3 emissions, since the proposed rules would require identification of the categories and separate disclosure of Scope 3 emissions data for each upstream or downstream activity that is significant when calculating Scope 3 emissions.

Scope 3 emission disclosures will be particularly challenging for financial institutions. Given the complexity of many financial institutions' value chains, the variety of financial asset classes, the current data gap and the lack of standardized calculation methodologies for Scope 3 emissions by financial institutions, the task of calculating Scope 3 emissions will be especially challenging for financial institutions.

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For example, there are significant obstacles to calculating (or at least estimating) financed emissions by banks, because borrowers and investees typically are not contractually required to report (or verify independently) emissions-related data to their banks. Although banks may begin to impose such requirements in response to the proposed rules, the implementation of these requirements may be difficult in the near term until the market has had the time to coalesce around widely-accepted reporting standards. Similar obstacles will be present in regard to calculating, reporting and verifying emissions-related data of the assets, companies and risks insured by insurers (or reinsured by reinsurers).

In its proposing release, the SEC also requested comments on whether it should require “location data” for GHG emissions data (including any required Scope 3 emissions data).²⁶ Specifically, the SEC requested comments on whether the emissions data should be grouped by zip code separately for each scope and whether the disclosure should be presented in a cartographic data display (e.g., a “heat map”). Considering the significant challenge financial institutions already face in obtaining data on financed emissions and other Scope 3 emissions on an aggregated basis, it would be even more challenging for financial institutions to obtain reliable Scope 3 emissions data on the basis of asset location.

2. Climate Scenario Analysis

The proposed rules would not require institutions to conduct climate scenario analysis. However, if an institution does conduct climate scenario analysis, then it must provide detailed qualitative and quantitative information on the financial impacts of climate change on its business, as well as the steps it is taking—or considering—to respond to hypothetical future climate scenarios. The scenario analysis disclosure requirements, if triggered, would require disclosure, regardless of materiality, of the scenarios considered (e.g., an increase of no greater than 3 °, 2 ° or 1.5 °C above pre-industrial levels), as well as the parameters, assumptions and analytical choices, and the projected principal financial impacts on business strategy under each scenario.²⁷

Scenario analysis and related disclosures may not be optional for financial institutions. Many financial institutions already conduct scenario analysis—or have committed to conducting such analysis in the near future—in response to supervisory guidance or pursuant to existing non-U.S. regulations²⁸ (or potential U.S. regulations). Furthermore, financial institutions that have not yet begun conducting scenario analyses are likely to face mounting pressure (and potentially an official mandate) from their regulators to do so. U.S. financial regulators have identified scenario analysis as a key emerging tool in the study (and potential mitigation) of climate-related financial risks. In particular, in their proposed Principles for Climate-Related Financial Risk Management for Large Banks, both the FDIC and the OCC have noted that “management should develop and implement climate-related scenario analysis frameworks in a manner commensurate to the bank’s size, complexity, business activity, and risk profile.” Federal Reserve Governor and Vice Chair nominee Brainard also has indicated that “[s]cenario analysis is a useful tool in assessing the links between climate-related risks and economic outcomes” and that “scenario analysis can help inform risk management at the level of individual financial institutions and more broadly.”²⁹ In addition, state

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financial regulators have noted the importance of conducting scenario analysis as well—for example, the NYDFS provided guidance to insurers on managing the financial risks from climate change, including on the use of scenario analysis.³⁰

Once a financial institution begins to conduct scenario analysis, the proposed rules would mandate detailed disclosures, regardless of whether the outcome of such analysis is material. Among those financial institutions that already have begun to incorporate this tool in their climate financial risk management, many are still in the early stages of implementation. The process of further developing and refining scenario analysis to establish appropriate scenarios, assumptions and methodologies is expected to be an evolving and iterative process, and input from industry members and regulators over time will inform industry standard practices. Requiring public disclosures as soon as a financial institution uses scenario analysis (*i.e.*, before it may have reached a sufficient level of maturity) may result in premature, outdated or confusing disclosure. It also may deter financial institutions that do not already conduct scenario analysis from employing this tool until they are required to do so or until industry participants have coalesced around standard practices.

3. Transition Plans; Targets and Goals

The proposed rules would require disclosure of detailed qualitative and quantitative information if an institution has adopted any transition plan (broadly defined to mean a company's strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions) as part of its climate-related risk management strategy, or set any climate-related targets or goals (*e.g.*, net zero goals). The transition plan and targets and goals disclosure requirements are not conditioned on materiality.

With respect to transition plans, the proposed rules would require an institution to discuss plans to mitigate or adapt to any identified transition risks, including laws, regulations or policies that restrict GHG emissions or products with high GHG footprints, as well as the changing demands or preferences of consumers, investors, employees, and business counterparties. In addition, an institution must update disclosures about its transition plan each fiscal year by describing the actions taken during the year towards achieving the plan.

With respect to targets and goals, the proposed rules would require disclosure of the scope of activities and emissions included in the target, unit of measurement (*e.g.*, absolute versus intensity-based targets), time horizon for achieving the target, baseline time period and baseline emissions against which progress will be tracked, as well as any interim targets. This includes not only targets and goals related to GHG emissions (*e.g.*, net zero pledges), but also any related to energy or water usage, conservation or ecosystem restoration, as well as goals with regard to revenues from low-carbon products in line with anticipated regulatory requirements, market constraints or other goals established by a climate-related treaty, law, regulation, policy or organization.

Disclosures related to transition plans, targets and goals also may not be optional for many financial institutions. Many have also voluntarily adopted climate-related transition plans, targets and goals, including pursuant to initiatives such as the Glasgow Financial Alliance for Net Zero, which requires signatories to commit to net zero financed emissions by 2050 and to set interim targets consistent with that goal.³¹ As a result, for these financial institutions, disclosure will be required if the proposed rules become effective.

4. Financial Estimates and Assumptions

The proposed rules mandate qualitative and quantitative climate risk disclosures in the notes to a company's audited financial statements. In particular, the proposed rules would require companies to disclose whether the estimates and assumptions they used to produce their financial statements were impacted by risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions (e.g., flooding, drought, wildfires, extreme temperatures, and sea level rise) as well as transition activities (e.g., a potential transition to a lower carbon economy or any climate-related targets disclosed). If so, companies would be required to provide a qualitative description of how the development of such estimates and assumptions were impacted by such severe weather events and transition activities.

Financial institutions should consider whether and, if so, how the physical and transition risks of climate change factor into their financial estimates and assumptions, including for establishing allowances for credit losses. Financial institutions are currently required for accounting and financial reporting purposes to disclose certain estimates and assumptions, including those relating to allowances for credit losses and fair value measurements. Financial institutions should consider how physical and transition risks of climate change could affect estimated credit losses and fair value measurements.

ADDITIONAL IMPLICATIONS

Further clarity is required regarding the application of certain industry-wide requirements to financial institutions. Financial institutions may face particular challenges in complying with certain requirements of the proposed rules. For example, proposed Item 1504(d) of Regulation S-K would require companies to disclose GHG intensity for the sum of Scope 1 and 2 emissions and, if Scope 3 emissions are otherwise disclosed, separately for Scope 3 emissions. The GHG intensity disclosure for each fiscal year included in the consolidated financial statements must be in terms of both metric tons of CO₂e per unit of total revenue and per unit of production. The unit of production should be "relevant to the company's industry to facilitate investor comparison of the GHG intensity of companies within an industry."

Although the SEC's proposing release provides an example of relevant units of production for companies in manufacturing industries (e.g., emission rate per car produced), the SEC did not explain (and it is unclear) what the appropriate "unit of production" measure would be for the financial sector, or what other measure of economic output should be used if a financial institution determines that it does not have a unit of production. Standard setters such as the PCAF³² and CDP³³ have identified a number of different intensity

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measures that may be appropriate for financial institutions, particularly with respect to the intensity of financed emissions. These include economic emissions intensity (*i.e.*, absolute emissions divided by the loan and investment volume), physical emissions intensity (*i.e.*, absolute emissions per unit of product produced by companies in a financial institution's portfolio) and weighted average carbon intensity (*i.e.*, weighted average of economic emissions intensity for companies in a portfolio). However, there are acknowledged limitations with respect to each of these measures, and what constitutes an appropriate measure will likely depend on a financial institution's businesses and the asset classes in its portfolio.

Financial institutions should pay particular attention to how climate-related actions and disclosures would interact with other applicable state, federal and non-U.S. laws and regulations that may also impact their climate change strategy. The proposed rules would require more extensive disclosure of climate-related targets, transition plans and Scope 3 emissions, which could potentially expose financial institutions to heightened regulatory, investor and other stakeholder scrutiny. This scrutiny may lead to a further escalation of the pressure on financial institutions to take certain actions to address climate change impacts. When considering whether to take such actions, financial institutions will have to be mindful of their other legal, regulatory and compliance obligations that may also impact their climate strategy.

- ***Fair Access.*** The SEC acknowledged that the proposed rules could lead an institution to “disengage with certain clients due to the effect that they may have on the firm’s Scope 3 emissions,” which “may be particularly relevant for certain financial institutions that are impacted by their portfolio firms’ emissions or climate-related risks.”³⁴ In January 2021 and following a change in the Administration, the OCC announced that it would not move forward with the publication of a fair access rule, which would have prohibited large OCC-regulated institutions from denying financial services to corporate entities, businesses, nonprofits or individuals solely on a “subjective basis” (*e.g.*, denying credit to oil exploration firms).³⁵ However, bills with similar requirements have been introduced in the U.S. Congress³⁶ and adopted or considered in various states.³⁷ For example, last summer, Texas passed a statute that requires state governmental entities to divest publicly traded securities of financial institutions that boycott fossil fuel-based energy companies and prohibits state governmental entities from contracting with such financial institutions.³⁸ Financial institutions, particularly those that are active in states with significant energy sector operations, will need to monitor legal developments in this space and factor in any applicable fair access requirements when assessing any targets or goals towards GHG reduction that involves exiting investments in companies conducting those operations.
- ***Financially Vulnerable Populations.*** The SEC acknowledged that the proposed rules (especially the requirement to disclose risk by zip code) could “cause some firms to relocate assets or operations to geographical areas less exposed to physical risks and/or give preferences to such areas for future business activity.”³⁹ However, such climate-related actions may make it more difficult for financially vulnerable populations—which “may also have fewer resources to recover from, or adapt to, adverse impacts”⁴⁰—to recover from or adapt to adverse impacts from climate change. Financial regulators have warned of the potentially disproportionate adverse impact of climate change on financially vulnerable populations, including low- and moderate-income communities, communities of color and other disadvantaged or underserved communities.⁴¹ As noted by the FSOC, “[c]ertain actions to address climate-related financial risks could impact financially vulnerable communities in the form of higher insurance and credit costs or the inability to obtain insurance or credit.”⁴² Financial institutions should carefully consider the potential impact of their climate-related actions on financially vulnerable populations, including conducting fair lending risk analysis or review of insurance unfair discrimination requirements where applicable, before committing to or taking any such actions.

CONCLUSION

In light of the significance and complexity of the proposed rules, financial institutions should promptly assess their ability to comply with the applicable requirements under the proposed rules and monitor the proposed rules' potential impact on market practices in the financial sector regarding voluntary and ultimately mandated climate-related disclosures, as well as climate-related commitments. In addition, financial institutions should consider all current and potential legal and regulatory requirements relevant to their climate strategy holistically. In particular, before committing to or taking climate-related actions, financial institutions should not only assess their disclosure obligations, but also consider any other state, federal and non-U.S. laws and regulations to which they may be subject (e.g., fair access, fair lending or insurance underwriting requirements), including the impact their actions may have on certain industries and populations that may be disproportionately affected by the physical and transition risks of climate change.

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ENDNOTES

- ¹ See Press Release, SEC, SEC Extends Comment Period for Proposed Rules on Climate-Related Disclosures, Reopens Comment Periods for Proposed Rules Regarding Private Fund Advisers and Regulation ATS (May 9, 2022), *available at* <https://www.sec.gov/news/press-release/2022-82>.
- ² Financial Stability Board, *Report on Promoting Climate-Related Disclosures* (July 7, 2021), *available at* <https://www.fsb.org/wp-content/uploads/P070721-4.pdf>. Financial institutions active in the European Union and UK, for example, are increasingly subject to climate-related disclosure obligations in their annual reports and financial product-specific disclosures under various regulations currently being phased in, including the EU Taxonomy and Sustainable Finance Disclosure Regulations and the UK's Climate-related Financial Disclosure Regulations 2022. These requirements apply to EU and UK-regulated financial institutions with a U.S. parent company. See The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022, *available at* <https://www.legislation.gov.uk/ukSI/2022/31/made>.
- ³ SEC, *Commission Guidance Regarding Disclosure Related to Climate Change* (Feb. 8, 2010), *available at* <https://www.sec.gov/rules/interp/2010/33-9106.pdf>.
- ⁴ See PCAF, *The Global GHG Accounting & Reporting Standard for the Financial Industry*, *available at* <https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf>.
- ⁵ See PCAF and Net-Zero Insurance Alliance, *Partnership for Carbon Accounting Financials Collaborates with UN-Convened Net-Zero Insurance Alliance to Develop Standard to Measure Insured Emissions* (Sept. 6, 2021), *available at* <https://www.unepfi.org/news/industries/insurance/partnership-for-carbon-accounting-financials-collaborates-with-un-convened-net-zero-insurance-alliance-to-develop-standard-to-measure-insured-emissions/>.
- ⁶ See Sullivan & Cromwell, *Biden Administration Announces New Climate Change Initiatives* (Feb. 28, 2022), *available at* <https://www.sullcrom.com/files/upload/sc-publication-biden-administration-announces-new-climate-change-initiatives.pdf>.
- ⁷ See Sullivan & Cromwell, *Financial Stability Oversight Council Report on Climate-Related Financial Risk* (Nov. 2, 2021), *available at* <https://www.sullcrom.com/sc-publication-financial-stability-oversight-council-report-on-climate-related-financial-risk>. FSOC is composed of ten voting members who head the U.S. Department of Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Corporation, the Federal Housing Finance Agency, the National Credit Union Administration, along with the independent member with insurance expertise, plus five nonvoting members. Two of the nonvoting members head the Office of Financial Research and the Federal Insurance Office. The other three nonvoting members are a state insurance commissioner, a state banking supervisor, and a state securities commissioner designated by peers.
- ⁸ CFTC, Climate-Related Market Risk Subcommittee, *Managing Climate Risk in the U.S. Financial System* (Oct. 2020), *available at* <https://www.cftc.gov/PressRoom/PressReleases/8234-20>.
- ⁹ See Sullivan & Cromwell, *OCC Seeks Public Feedback on Principles for Climate-Related Financial Risk Management for Large Banks* (Dec. 21, 2021), *available at* <https://www.sullcrom.com/files/upload/sc-publication-occ-release-and-seeks-feedback-on-principles-for-climate-related-financial-risks-management-for-large-banks.pdf>.
- ¹⁰ FDIC, *FDIC Issues Request for Comment on Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions* (Mar. 30, 2022), *available at* <https://www.fdic.gov/news/press-releases/2022/pr22027.html?msclkid=e5291204b38911ec8d8e018fd9a3ce15>.
- ¹¹ See OCC, *OCC Seeks Feedback on Principles for Climate-Related Financial Risk Management for Large Banks*, News Release 2021-138 (Dec. 16, 2021), *available at*

ENDNOTES (CONTINUED)

- <https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-138.html>; FDIC, Statement by Martin J. Gruenberg, Acting Chairman, FDIC Board of Directors on the Request for Comment on the Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions (Mar. 30, 2022), available at <https://www.fdic.gov/news/speeches/2022/spmar3022.html>.
- ¹² Board of Governors of the Federal Reserve System, *Speech: Building Climate Scenario Analysis on the Foundations of Economic Research*, Governor Lael Brainard (Oct. 7, 2021) available at <https://www.federalreserve.gov/newsevents/speech/brainard20211007a.htm?msclkid=835acb64b38a11ec92018b7b96b3d19c>.
- ¹³ Board of Governors of the Federal Reserve System, *Financial Stability Report* (Nov. 2020), available at <https://www.federalreserve.gov/publications/files/financial-stability-report-20201109.pdf>.
- ¹⁴ FIO, Request for Information on the Insurance Sector and Climate-Related Financial Risks, 86 Fed. Reg. 48814 (Aug. 31, 2021).
- ¹⁵ On April 8, 2022, the NAIC adopted a new survey based on the Task Force on Climate-Related Financial Disclosures (TCFD) standard. Insurers formerly required to submit the annual NAIC Climate Risk Disclosure Survey will be required to submit the new TCFD-aligned standard by November 2022. See NAIC, U.S. Insurance Commissioners Endorse Internationally Recognized Climate Risk Disclosure Standard for Insurance Companies, available at <https://content.naic.org/article/us-insurance-commissioners-endorse-internationally-recognized-climate-risk-disclosure-standard>.
- ¹⁶ New York Department of Financial Services, Guidance for New York Domestic Insurers on Managing the Financial Risks from Climate Change (Nov. 15, 2021) (the “NYDFS Guidance”), available at https://www.dfs.ny.gov/system/files/documents/2021/11/dfs-insurance-climate-guidance-2021_1.pdf. See also Sullivan & Cromwell, New York Department of Financial Services Issues Final Guidance on Managing the Financial Risks of Climate Change for Insurers (November 30, 2021), available at <https://www.sullcrom.com/files/upload/sc-publication-new-york-insurance-regulator-issues-guidance-on-managing-climate-risks.pdf>.
- ¹⁷ See Sullivan & Cromwell, U.S. Department of Labor Proposes ESG-Related Updates to the ERISA Investment Duties Regulation (Oct. 19, 2021), available at <https://www.sullcrom.com/files/upload/sc-publication-US-Department-of-Labor-Proposes-ESG-Updates-ERISA-Investment-Duties.pdf>.
- ¹⁸ The TCFD Framework is organized around four core pillars: governance, strategy, risk management, and metrics and targets.
- ¹⁹ The proposed rules could apply to insurance companies that issue certain SEC-registered life insurance or annuity products but that otherwise are not registered and have no publicly listed equity or debt securities. Although the proposed rules would not apply to variable insurance or annuity products registered on Forms N-3, N-4 or N-6, the proposed rules would apply to SEC-registered non-variable products registered on Form S-1 or Form S-3, including, e.g., registered index-linked annuities and registered index-linked universal life policies.
- ²⁰ *Id.* at 173.
- ²¹ Greenhouse Gas Protocol, available at <https://ghgprotocol.org/>; proposing release at 35-36.
- ²² Proposing release at 205-206.
- ²³ *Id.* at 205.
- ²⁴ PCAF Standard, available at <https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf?msclkid=66b8fabfb5a511ec9b70fcebcb83dc15>.
- The PCAF Standard covers six asset classes: listed equity and corporate bonds; business loans and unlisted equity; project finance; commercial real estate; mortgages; and motor vehicle loans.

ENDNOTES (CONTINUED)

- 25 CDP, Finance sector's funded emissions over 700 times greater than its own (April 28, 2021), available at <https://www.cdp.net/en/articles/media/finance-sectors-funded-emissions-over-700-times-greater-than-its-own>.
- 26 Proposing release at 188.
- 27 *Id.* at 87-91.
- 28 For example, the Bank of England's Prudential Regulatory Authority and the European Central Bank (ECB) have each set out expectations for their supervisee banks and/or insurers, as applicable, to conduct climate scenario analysis. See <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2019/ss319.pdf?la=en&hash=7BA9824BAC55FB313F42C00889D4E3A6104881C44>; <https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.202011finalguideonclimate-relatedandenvironmentalrisks~58213f6564.en.pdf>.
- 29 Lael Brainard, *Building Climate Scenario Analysis on the Foundations of Economic Research* (Oct. 7, 2021), available at <https://www.federalreserve.gov/newsevents/speech/brainard20211007a.htm>.
- 30 See NYDFS Guidance, *supra* note 15.
- 31 Proposing release at 27.
- 32 PCAF, *supra* note 3.
- 33 See, e.g., CDP Technical Note: Portfolio Impact Metrics for Financial Services Sector Companies, available at https://cdn.cdp.net/cdp-production/cms/guidance_docs/pdfs/000/002/428/original/CDP_Technical_Note_on_Portfolio_Impact_Metrics_for_Financial_Services_Sector_Companies.pdf?msclkid=b9c073b3b5a611ec8b153a75335b7d41.
- 34 Proposing release at 422.
- 35 OCC, OCC Puts Hold on Fair Access Rule (Jan. 28, 2021), available at <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-14.html>.
- 36 See S. 563, *Fair Access to Banking Act* (March 3, 2021), available at <https://www.congress.gov/bill/117th-congress/senate-bill/563/text>.
- 37 See, e.g., David Wethe and Shelly Hagan, *Texas Spurs Copycats as States Punish Banks that Snub, Oil, Gas* (Feb. 24, 2022), available at <https://www.bloomberg.com/news/articles/2022-02-24/texas-spurs-copycats-as-states-punish-banks-that-snub-oil-gas>.
- 38 S.B. No. 13, *An Act relating to state contracts with and investments in certain companies that boycott energy companies*, (Sept. 1, 2021), available at <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00013F.pdf#navpanes=0>.
- 39 Proposing release at 422.
- 40 FSOC, Financial Stability Oversight Council Identifies Climate Change as an Emerging and Increasing Threat to Financial Stability (Oct. 21, 2021), available at <https://home.treasury.gov/news/press-releases/jy0426?msclkid=194bf9a9b3c011ec9ed3cca1f929f27e>.
- 41 See, e.g., Federal Reserve Bank of New York, *Reducing Climate Risk for Low Income Communities* (Nov. 19, 2020), available at https://www.newyorkfed.org/newsevents/events/regional_outreach/2020/1119-2020.
- 42 FSOC, *supra* note 39.

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Appendix A⁽¹⁾

1. Disclosure Compliance Dates

Filer Type	Disclosure Compliance Date		Statement Metrics Audit Compliance Date
	All proposed disclosures, other than Scope 3 GHG emissions metrics	Scope 3 GHG emissions metrics	
Large Accelerated Filer	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)	Same as Disclosure Compliance Date
Accelerated Filer and Non-Accelerated Filer	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)	
Smaller Reporting Company	Fiscal year 2025 (filed in 2026)	Exempted	

2. Attestation Compliance Dates

Filer Type	Disclosure Compliance Date (No Assurance)	Limited Assurance ⁽²⁾	Reasonable Assurance ⁽³⁾
Large Accelerated Filer	Fiscal year 2023 (filed in 2024)	Fiscal year 2024 (filed in 2025)	Fiscal year 2026 (filed in 2027)
Accelerated Filer	Fiscal year 2024 (filed in 2025)	Fiscal year 2025 (filed in 2026)	Fiscal year 2027 (filed in 2028)

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- (1) Assumes a fiscal year end of December 31. The SEC indicated a registrant with a different fiscal year-end date that results in its fiscal year 2023 commencing before the effective date of the rules would not be required to comply until the following fiscal year.
- (2) Limited assurance is equivalent to the level of assurance (commonly referred to as a “review”) provided over a U.S. domestic registrant’s interim financial statements included in a Form 10-Q.
- (3) Reasonable assurance is equivalent to the level of assurance provided in an audit of a registrant’s consolidated financial statements included in a U.S. domestic company’s Form 10-K annual report or a foreign private issuer’s Form 20-F.