

SEC climate disclosure briefing for board directors

10 July 2023

Briefing

In March 2022, the U.S. Securities and Exchange Commission (SEC) announced a proposal to require US public companies to include climate-related disclosures in their registration statements and periodic reports.

This briefing, produced by the Climate Governance Initiative, explores and discusses the context of the proposed SEC climate disclosure rule, the current status and likely next steps, and provides key questions for board directors to ask their boards in relation to it.

In March 2022, the Securities and Exchange Commission (SEC) [announced a proposal](#) to require US public companies to include climate-related disclosures in their registration statements and periodic reports.

While the SEC is still in the process of finalising the disclosure rules, the proposal indicates that corporate boards in the US will have a key responsibility in ensuring transparent climate-disclosures to investors, policymakers and other key stakeholders. The proposed rule goes beyond disclosure and calls for corporate directors to tackle the issue of climate change in the development of their companies' corporate strategy, oversight, and disclosure.

Key questions for board directors

- **Is your board prepared for the upcoming requirements for mandatory climate disclosures in the US?**

Whilst there is uncertainty on the exact scope and timing of the reporting rules, the consensus is that these are expected to be introduced over the coming months, by the end of 2023.

- **Can your board confidently and clearly disclose to investors, policymakers and other key stakeholders the climate-related risks and opportunities faced by the organisation, and the actual or likely material impacts on the business, strategy and outlook?**



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This should include the board's climate-related expertise, roles and structure, frequency of discussion, goal-setting, monitoring and remuneration.

- Does the board have oversight of the organisation's process for assessing and managing climate-related risks and opportunities, including internal management roles and processes?

Is the board aware of climate-related reporting capabilities and whether the company can adequately and correctly report on climate-related metrics and targets to external stakeholders and investors?

Why has the SEC proposed a rule for climate disclosure?

One of the SEC's primary responsibilities is to require companies to provide, to their investors and shareholders, accurate and timely disclosure of material information that could affect the company's financial performance.

The SEC has proposed a rule for climate disclosure in recognition of this responsibility citing that "The SEC has broad authority to promulgate disclosure requirements that are necessary or appropriate in the public interest or for the protection of investors."¹, and climate risk is an increasingly relevant risk (and opportunity) area for companies.

In its proposed rule, the SEC also highlights the need to manage the increased risk of greenwashing that may result from corporate disclosure of climate-related opportunities, and that mandating a standardised approach could help to mitigate against this.

The SEC's motivations align with the board's fiduciary duty of prioritising the long-term financial success and protection of the company and its stakeholders and therefore acting in shareholders' best interests, making informed decisions, and exercising reasonable care and diligence.

What are the key climate disclosure areas?

The proposed disclosure requirements seek to provide investors with climate-related information that is **consistent**, **comparable**, and **decision-useful** in investment decisions. On a high-level, the organisation must include

specific information in its registration statements and periodic reports, such as in Form 10-K, including information about:

- The oversight and governance of climate-related risks by the organisation's board and management
- Climate-related risks and their actual or likely material impacts on the organisation's business, strategy, and outlook over the short, medium or long-term
- Governance processes for identifying, assessing and managing climate-related risks and relevant risk management processes
- The organisation's greenhouse gas (GHG) emissions, both direct and indirect (scope 1 and 2) emissions as well as indirect non owned (scope 3) emissions; subject to independent assurance for accelerated and large accelerated filers and for certain emissions
- Certain climate-related financial statement metrics and related disclosures as a note within audited financial statements
- Details of climate-related targets, goals and transition plans, scenario analysis if any

The proposed rule includes disclosure areas similar to other globally accepted disclosure frameworks including Task Force on Climate-Related Financial Disclosures (TCFD) and the Greenhouse Gas (GHG) Protocol. The proposed rule, if enacted, would be a mandatory disclosure requirement.

How do the SEC's disclosure requirements fall within the board's responsibility?

Several disclosure areas fall within the board's responsibility of effective climate governance. Proposed disclosures on governance relate directly to climate accountability of the board. Consequently, the board must ensure subject command on climate-related risks and opportunities, have an oversight structure that ensures adequate management and reporting, allows an open exchange with peers, policymakers and investors to stay up-to-date, and finally ensures that material information is effectively communicated across all stakeholders.

The physical and transition risks of climate change are unique to the organisation and will depend on factors such as the nature of its business, geography, and regional laws. Physical risks are those associated with the impacts from climate change. These can be event driven (acute) – such as extreme weather events, heat waves or floods – or associated with longer-term shifts in climate patterns (chronic) – such as sustained high temperatures, chronic heat waves and sea-level rise. Transition risks are those associated with the pace and extent at which an organisation manages and adapts to the internal and external pace of change to reduce greenhouse gas emissions and transition to renewable energy. These risks include policy and legal changes relating to corporate climate action, technological improvements and innovation, market shifts in supply and demand, and reputational risk.

The board should have an understanding of the materiality of climate risks relevant to the company's business over the short, medium, and long term so that it can oversee whether management is identifying and managing such risks, and also to allow for informed decision-making.

The proposed rule will require granular disclosure on various aspects of climate risk management including strategy, risks and opportunities, emissions, targets, and metrics. The board should ensure that the company has the skills and capabilities to deliver against these disclosure requirements. The Climate Governance Initiative's [interactive tool](#) has been developed to guide board directors and business leaders through the global climate disclosure landscape.

Given the board's overall responsibility for overseeing the effective management of the company and representing the interests of shareholders, the board director's role in the climate governance and oversight is increasingly important and will be relevant across the listed dimensions of the proposed rule.

What is the current status and SEC next steps?

The proposed rule is at the analysis stage. The SEC conducted [a series of meetings in 2021](#) with industry representatives (including the Sustainability Accounting Standard Board (SASB), US banks, the US Chamber of Commerce, and tech companies among others) as part of its request for

public input on climate change disclosures in the US. In the same year, the SEC ran a public consultation on climate-related disclosures where it sought responses to fifteen questions for consideration.

The Climate Governance Initiative submitted a response to the SEC's 2021 consultation which answers the individual questions and draws the SEC's attention to the World Economic Forum's Principles for Effective Climate Governance.

Overall, the responses from both industry meetings and the public consultation covered an array of suggestions, issues, and acceptance across components of proposed rule.

As a next step, from March – June 2022, the SEC made its proposal for the climate disclosure rule available for public comment.

The consultation period is now over and the SEC is in the process of finalising the proposed rule. The exact date for communications on the next steps is yet to be confirmed, with a decision on the new rule expected in the Autumn 2023.

With thanks to Akanksha Sahay, MBA Candidate at Cambridge Judge Business School, for her support in preparing this briefing.

End notes:

1: See, e.g., Section 7 of the Securities Act [15 U.S.C. 77g] and Sections 12, 13, and 15 of the Exchange Act [15 U.S.C. 78l, 78m, and 78o].

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