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SEC climate disclosure: considerations for banking institutions

Securities and Exchange Commission (SEC) rules for public company climate disclosure are now final.

On March 6, 2024, the SEC issued a final rule that requires climate-related disclosures in annual reports and registration statements.[1] While in line with existing frameworks and guidance, it may take significant coordination to understand these connections and implications and to create a good compliance strategy. There are specific nuances and implications for banking institutions that executives should consider even as the rules face challenges in court.

5 insights you should know

A focus on principles: The final rule takes a principles-based approach rather than being overly prescriptive. This means that registrants have more flexibility to determine the specific content and presentation of their climate-related disclosures, as long as they address the topics specified in the rule.

Nuanced materiality judgments: The final rule does not prescribe specific materiality thresholds in all cases, and registrants are required to apply traditional notions of materiality. Disclosure of Scope 1 and 2 emissions, as well as the impacts of climate-related risks, is only required where and when material. Material expenditures that are a direct result of 1) mitigation of or adaption to climate-related risks, 2) disclosed transition plans, or 3) actions taken to achieve or progress toward those targets or goals are also required disclosures.

Scope 3 emissions not required but pressure looms: Even though Scope 3 emissions reporting is not directly required by the final rule, many banks have committed to Scope 3 targets and may still need to disclose aspects of Scope 3 in certain instances. This is especially true when reporting progress against climate targets or contextualizing the effects of climate-related risks in financial statements.

Overlap with Interagency Principles for Climate-Related Financial Risks: The final rule aligns with the inter-agency guidance on climate-related financial risks from the FRB, FDIC, and OCC.[3] Both emphasize integrating climate-related risks into overall risk management, as well as the board's role in overseeing climate-related risks.

Scenario analysis encouraged: Banks may choose to conduct scenario analysis for other reasons, such as for internal planning purposes or to meet the expectations of prudential regulators. If banks choose to conduct scenario analysis, they will need to consider how to disclose the results of that analysis in a way that is both informative for investors and consistent with prudential regulator expectations.

5 considerations to evaluate now

1. **How can banks leverage existing climate disclosure frameworks to comply with the final rule, while maintaining consistency across jurisdictions?** Many banks have already aligned with the TCFD framework and the ISSB standards, and numerous jurisdictions have adopted or are considering adopting climate disclosure requirements based on these frameworks. By aligning their disclosures with these existing frameworks and operational reporting capabilities institutions can reduce their compliance burden.

2. **How should banks determine the materiality of their Scope 1 and 2 emissions and the impacts of climate-related risks?** Banks will need to consider both quantitative and qualitative factors when determining whether their Scope 1 and 2 emissions and the impacts of climate-related risks are material to their business, results of operations, or financial condition. Moreover, they will need to analyze the significance of investments in their sustainability and climate-risk management programs. Internal processes and methodologies will need to be developed to make these nuanced judgments.

3. **How should banks approach voluntary Scope 3 emissions disclosures?** If an institution has existing climate-related targets or goals, Scope 3 emissions are likely material to report progress against those. Banks should also consider the extent to which Scope 3 emissions disclosure is required by other regulatory regimes[2], such as those in the EU (e.g., CSRD and related guidance, like that of the European Banking Authority) and California (e.g., SB-253, SB-261, AB-1305), and how aligning with those requirements can help to streamline emissions-related initiatives.

4. **Given the alignment between inter-agency guidance and the SEC rule, how can banks ensure strong coordination between climate-related disclosures and prudential regulatory compliance?** The former provides high-level guidance on risk management practices, while the latter sets forth specific disclosure requirements.[4] SEC disclosures will rely on the methodologies and analyses developed in response to prudential regulator expectations.

5. **If banks conduct scenario analysis, how should they balance the potential voluntary disclosure with the need to address evolving expectations from prudential regulators?** Scenario analyses designed for internal risk management or for regulatory climate scenario analysis exercises, (e.g., FRB pilot), might use different assumptions or be more granular than those suitable for public disclosure. Disclosing scenario analysis can provide valuable insights to investors but may also reveal sensitive information to competitors. Banks need to assess which scenarios, results, and methodologies align with SEC disclosure requirements.

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[1] SEC Final Rule Release No. 33-11275, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," March 6, 2024.

[2] Deloitte, "Sustainability regulation: A catalyst for transformation," March 6, 2024.

[3] FRB, OCC, FDIC, "Agencies issue principles for climate-related financial risk management for large financial institutions," October 24, 2023.

[4] Deloitte, "Banking agencies finalize principles for climate-related financial risk management," November 16, 2023.