



Comments from the United States Council for International Business (USCIB) regarding the proposed Securities and Exchange Commission (SEC) Rule:

“The Enhancement & Standardization of Climate-Related Disclosures for Investors”

Considerations for U.S. Companies Doing Business in the Global Marketplace

Introduction

The United States Council for International Business (USCIB) comments on the proposed SEC Rule on Climate-related Risk Disclosures for Investors highlights 5 priority areas which its members regard as especially relevant to American companies across a wide range of sectors doing business in the global marketplace:

- Inter-operability of SEC Rules with current and emerging regulations, standards, and initiatives abroad
- Tracking and reflecting GHGs involved in complicated supply chains, including outside the U.S.
- Tracking and reflecting Scope 3 Emissions, including outside the U.S.
- Unintended consequences for future voluntary climate initiatives and goals
- Assessing Climate and Transition Risks in multiple jurisdictions abroad

USCIB strongly supports the UN Framework Convention on Climate Change (UNFCCC) and its Paris Agreement. USCIB members have made important commitments and are mobilizing action and investment to reduce GHGs and plan for near- and long- term risks, including those due to climate change. The international community is not on track to deliver climate mitigation, finance, and adaptation commitments, and both public and private sectors must scale up partnership and action domestically and through international cooperation.

USCIB members are committed to good practice in corporate governance. USCIB supports transparency and sharing of material information with respect to business and investor decision-making, action and tracking of progress as integral elements of ESG practices relating to climate change and other environmental areas. USCIB members already actively participate in numerous voluntary standards and disclosures relating to greenhouse gas emissions and climate change risks and will continue to look for ways to lead in the future.

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USCIB members support enhancing and standardizing climate-related disclosures, with due attention to ensure disclosures are material. Converging the diversity of voluntary frameworks and standards will support reducing duplicative efforts and allow investors, companies, and the government to use associated resources more efficiently – USCIB encourages SEC to consider the pursuit of convergence as a desirable objective.

USCIB members do have concerns about diverging rules and obligations which are emerging, and believe a more consistent approach is necessary. Complex and burdensome requirements would compete for time and resources that could be more valuably deployed toward climate action.

USCIB believes the 5 areas indicated above are significant considerations for the effectiveness of the proposed Rule, and if not addressed, will entail substantial costs and other burdens for U.S. business, while confusing investors with copious, non-material information. Clarification and revision in these areas would benefit the viability of the proposed rule, while reducing unnecessary burdens on U.S. companies.

USCIB notes that the SEC proposal has implications beyond disclosure, and will significantly impact company climate change planning and management practices in a variety of ways:

- how companies oversee, manage, assess and mitigate climate risk and impacts of climate change,
- the data companies collect and,
- how companies assess and validate that data.

These wider considerations raise several key questions for companies doing business internationally, and therefore warrant careful consideration, and an inclusive discussion with the business community as this proposed rule is further developed. In this regard, SEC next steps in development, finalization and eventual implementation should allow adequate time for the private sector to:

- harmonize procedures,
- allow development of capacities for compliance within companies,
- ensure required disclosures are subject to traditional materiality limits.

In general, implementation of the proposed rule should be delayed at least 2 years to give time for companies to ensure the appropriate resources, expertise, standards, and systems are in place. Giving companies additional time to file or furnish this data following the 10-K submission would be critical, and the timing of any required disclosure should be consistent with existing and emergent standards and reporting regimes, so that such filings would not be in the 10-K, but instead filed 6-9 months later.

Even companies that have been voluntarily reporting some of what the SEC Proposal would require will need adjustment to align to such a significantly more stringent set of rules and with a much higher liability risk.

Considerations for Companies Doing Business Outside the U.S.
Inter-operability within the international regulatory and market context

USCIB believes the SEC rules should be designed to function in synergy with other international frameworks. To the extent possible, the proposed SEC Climate Risk Disclosure rules should be finalized to harmonize with and be mutually recognized by other frameworks, such as the Task Force on Climate-Related Financial Disclosures (TCFD) among others.

In the international arena, U.S. companies face a substantial and ever-growing array of climate-related reporting and disclosure requirements and expectations, whether from national or regional government entities, or via stakeholder and multi-stakeholder groups. In addition, other emerging issues, such as nature-related disclosure can be expected to overlap and be combined with current good practice relating to climate risk disclosure.

Large institutional investors that invest globally seek globally comparable climate data. Furthermore, global institutional investor expectations will likely be informed by the requirements of the IFRS International Sustainability Standard Board (ISSB) and the European Union's Corporate Sustainability Reporting Directive, and other emerging EU-wide and national specific rules.

Significant Challenges Tracking and Reflecting GHGs associated with Supply Chains outside the United States

Many USCIB members rely on complex, diverse and extensive supply chains in the global marketplace, which vary sector by sector, and from company to company. To the extent that the proposed SEC rule requires companies to capture and report on the climate impacts and risks of these diverse supply chains, the task and burden becomes even more complex for those companies with such supply chains, and the multiple tiers of supply chains involved in some complex manufactured products.

These potential requirements raise real questions about the practicality and possible costs of making businesses responsible to disclose information on manufacturers and suppliers, including those outside the U.S., to meet SEC climate assessment standards.

If the requested climate-related information of these complex supply chain links is not always possible to capture, then resulting reports might be incomplete. Such incomplete reports that might result could expose companies to SEC investigations for lack of compliance and transparency, and to legal or stakeholder challenges asserting inadequate or incomplete reporting.

Given the inherent level of uncertainty, reliance on third party data – many of which are not in or under the jurisdiction of the U.S. – and reliance on assumptions and incomplete information, particularly for Scope 3 emissions, the SEC should not require attestations for the provided disclosures and should otherwise ensure safe harbors are sufficiently broad so that the focus is on improved disclosures of material climate-related information, rather than liability and risk.

Significant Challenges Tracking and Disclosing Scope 3 Emissions outside of the United States

The proposed Scope 3 requirements will be difficult for any company, but for companies doing business and selling products in multiple markets overseas, tracking and disclosing Scope 3 emissions will be particularly challenging. This will especially be the case for small and medium-sized enterprises (SMEs). In addition, the risk of “double-counting” of “Scope 3” in international settings is magnified.

The concern that we see is that the methodology for measuring Scope 3 emissions are ill-defined and resource intensive. The typical calculation methods rely on expensive LCA databases, highly specific subject matter expertise and sophisticated management systems to maintain records. The progression from secondary data (financial modeling) to primary data (supplier information) can be nearly impossible in complex, commoditized, international supply chains. Plus with primary data, the administrative burden & privacy concerns of supply chain participants makes requiring compliance to provide this information difficult. As noted, this will be all the more complex for SMEs.

Due to the complexity of the disclosures required and the additional challenge of capturing the required information from international sources, USCIB strongly encourages the SEC to:

- Make Scope 1 and 2 the priority focus, with Scope 3 to be included voluntarily and all such reporting “furnished not filed”,
- Disclose Scope 3 via a narrative description, rather than with a quantitative metric,
- Extend the transition period for Scope 3 emissions.

Unintended Consequences for Future Voluntary International Climate Targets and Goals

Requiring SEC reporting for voluntary pledges may unintentionally discourage further climate voluntary pledges. If unmet aspirational pledges become subject to compliance follow-up or penalty, the potential liability may dissuade companies from setting “stretch goals.”

Similarly, the SEC seems to recognize that companies may set longer term (e.g., 5+ years) goals without having full knowledge of the path to getting there. This is particularly important for Scope 3 emissions, which will take significant efforts across companies, sectors, and countries to achieve.

Setting a goal with the ability to acknowledge unknowns is preferred over not setting any goal at all. Finally, the same logic applies to disclosure of internal projections and scenario planning. Companies should be encouraged to undertake these activities, which often require business confidential and competition-sensitive information. Requiring disclosure would discourage companies from engaging in these important planning activities.

USCIB recommends that the final SEC rule:

- Explicitly recognize voluntary pledges, goals, and initiatives as aspirational and not promises or guarantees, and as such should not be subject to liability risk,
- Do not require disclosure of scenario planning and internal projections.

Assessing Climate-related “Transition” Risks in the Global Marketplace

Required disclosures of climate-related “transition” risks present particular challenges for companies doing business internationally – particularly given that the proposed 1% line item financial disclosure provision has no precedent and is likely to capture significant immaterial information.

The SEC proposal defines climate-related “transition risks” broadly:

“the actual or potential negative impacts on a registrant’s consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks, such as increased costs attributable to changes in law or policy, reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, reputational impacts (including those stemming from customers or business counterparties) that might trigger changes to market behavior, consumer preferences or behavior, and registrant behavior”.

According to the current proposed SEC rule, “transition risk” could include potential changes in markets, technology, law, or policy, which companies that operate internationally will be expected to analyze in multiple national and regional settings and disclose.

Markets, technology, and political developments are often unpredictable, and disruptions can have a significant impact, as most recently experienced during the pandemic and conflict in Ukraine. It will be challenging for companies doing business in multiple markets to be able to provide comparable, consistent, and reliable disclosure in this respect given complex, dynamic and varied global challenges.

Materiality has been the touchstone of financial reporting for decades and much of the detail the SEC would require in the proposal, including the transition risk reporting in an international setting, is not consistent with that concept.

ABOUT USCIB

USCIB advances the global interests of American business. We do so through advocacy that calls for an open system of world trade, finance and investment, where business can flourish and contribute to economic growth, human welfare, and environmental protection.

USCIB's advocacy spans a broad range of policy issues, leveraging member expertise and a unique network of global business organizations: the International Chamber of Commerce (ICC), Business at OECD (BIAC), and the International Organization of Employers (IOE). Through these organizations' official consultative status in major intergovernmental fora, USCIB represents American business positions to the U.S. government and to the UN system, the OECD and the International Labor Organization (ILO), among others.

USCIB membership encompasses more than 300 global corporations, professional firms and industry associations, which work through USCIB committees to provide business input for USCIB to convey to policymakers at home and abroad.