

THE REVIEW OF
**BANKING & FINANCIAL
SERVICES**
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 38 No. 2 February 2022

INCREASED CLIMATE CHANGE DISCLOSURES IN ANNUAL REPORTS

Responding to increased investor interest in climate matters, the SEC is devoting new attention to climate change disclosures in annual reports. In this article, the authors address the Commission's existing disclosure framework for climate change matters, its ramped-up focus on climate change disclosures, and its release of a sample comment letter relating to such disclosures. They note that these steps are likely to inform the new rules that the SEC has indicated it will propose to clarify and expand specific mandatory climate-related disclosures.

By Sonia Barros and Sara von Althann *

The Securities and Exchange Commission has long taken the position that existing SEC disclosure requirements mandate the disclosure of certain climate change matters to the extent material. Due to increased investor interest in climate matters, the SEC has recently increased its focus on these disclosures and has indicated the agency will propose new rules clarifying and expanding specific mandatory climate-related disclosures. As part of the SEC's recent focus, the SEC Staff has ramped up the issuance of disclosure comments relating to climate change matters, using existing disclosure requirements as the hook to do so. The information gathered through this process is likely to inform the new climate change disclosure rules that the SEC is concurrently in the process of developing. This article examines existing disclosure rules and guidance, and how the Staff is using them to elicit climate change disclosures from companies.

EXISTING DISCLOSURE FRAMEWORK FOR CLIMATE CHANGE MATTERS

There is currently no integrated framework under the U.S. federal securities law for public company reporting of climate change matters. Instead, disclosure of such matters is currently derived from general disclosure requirements set forth in Regulation S-K relating to the business, legal proceedings, risks and trends, as well as SEC and Staff guidance. In addition, disclosure is required of "such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."¹

Regulation S-K provides a basis for various climate-related disclosures, to the extent material, under the following rules:

¹ Rule 408 under the Securities Act of 1933 and Rule 12b-20 under the Securities Exchange Act of 1934.

*SONIA BARROS is a partner and SARA VON ALTHANN is a counsel at Sidley Austin LLP's Washington DC's office. Their respective e-mail addresses are sbarros@sidley.com and svonalthann@sidley.com.