

サステナビリティに関する情報開示（1）－ 米国の動向 －

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I. はじめに

(1) サステナビリティに関する情報開示

明確な定義はないが、気候変動や資源不足、会社の社会的責任、良き企業市民(good corporate citizenship)などを含む幅広いテーマを包含するものであり、広くは ESG 問題として性格付けをされることが多いといわれる¹。

一義的ではないけれども、ESG 問題の環境（E）には、気候変動や GHG・炭素の排出、リサイクル、水資源の利用などの問題、社会（S）には、職場の文化や健康・安全性、従業員の多様性、人権、従業員の離職率、児童労働、製品の質・安全性、サプライチェーンの労働状況などの問題、ガバナンス（G）には、独立取締役や取締役会の多様性・構成、株主の権利、役員報酬などの問題が含まれるとされる²。

(2) 連邦証券諸法・州法上の情報開示

連邦証券諸法上、サステナビリティ開示あるいは ESG 開示という包括的な形での情報開示制度は設けられておらず、サステナビリティ課題ないし ESG 問題のうち個々のテーマに関して情報開示制度が設けられているものや、1933 年証券法（以下、1933 年法）上の登録届出書、1934 年証券取引所法（以下、1934 年法）上の年次報告書、委任状勧誘説明書等における非財務情報の内容に係る記載事項を定める Reg. S-K（17 CFR Part 229）の開示項目（Item）での開示が要求されるものがある。

近年の例でいうと、①ドッド・フランク法 1503 条(d)の規定を受けて、Reg. S-K に項目 104 が追加され、石炭その他の鉱山を運営する会社および子会社を有する会社に、職場の安全性と健康に関する基準違反の事例などを開示させる制度が導入された例（2011 年）、②ドッド・フランク法 953 条(b)(1)に基づき Reg. S-K の項目 402(u)(1)において役員の年間報酬と全従業員の年間報酬との比率を開示させる制度（いわゆる、ペイ・レシオの開示）が導入された例（2015 年）、また州法では、カリフォルニア州で事業活動を行い、全世界の年間収入額が 1 億ドルを超える小売業者および製造業者に対し、サプライチェーンにおける奴隷や人身売買を根絶するため、人身売買や奴隷のリスクの評価・対処のためのサプライチェーンの検証や、サプライチェーンにおける

¹ SEC, Rel. No. 33-10064 (Concept release), Business and Financial Disclosure Required by Regulation S-K (Apr. 13, 2016), 81 Fed. Reg. 23916, 23970 (Apr. 22, 2016).

² Jennifer O'Hare, Don't Forget the "G" in ESG: The SEC and Corporate Governance Disclosure, 64 Ariz. L. Rev. 417, 422 (2022); Lisa M. Fairfax, Dynamic Disclosure: An Expose on the Mythical Divide Between Voluntary and Mandatory ESG Disclosure, 101 Tex. L. Rev. 273, 281 (2022).

人身売買や奴隷についての当該開示会社の基準に供給者が遵守しているかを評価するための当該供給者の監査の実施などを会社のウェブサイト上で開示するよう義務づける制度（Cal. Civil. Code§1714.43：カリフォルニア・サプライチェーン透明法と呼ばれる³⁾）を導入した例（2010年）などがその例として挙げられる。

(3) 自主的開示の拡がり

他方で、SEC への提出書類ではない任意の開示事例は近年増加の一途をたどっているようであり、コンサルティング・調査会社の Governance & Accountability Institute, Inc. (G&A 社)の調査によれば、S&P500 の構成会社のうちサステナビリティ報告書を作成し開示する会社は、2011年には20%に過ぎなかったが、2015年には81%、2021年には96%に達しているという⁴⁾。こうしたサステナビリティ報告書あるいは ESG 報告書の自主的開示は、会社のウェブサイト上で開示されることが多く、その内容は会社や業界によって多様であり、それぞれのテーマごとに報告書を作成する例もあるといい、長さは100頁を超えるものもあるなど様々であるようである（Fairfax 前掲 292 頁、Fisch⁵⁾ 944 頁⁵⁾）。

こうした大規模上場会社による自主的開示が広く行われているなか、最近の米国のサステナビリティに関する情報開示として、いくつか注目すべき規制上の動きがみられる。第1に、2020年8月にSECによって行われた人的資本に関する開示規制（Reg. S-K）の改正（下記Ⅱ）、第2に、2022年3月にSECによって行われた気候変動関連の開示規制（Reg. S-K および Reg. S-X）の改正提案（下記Ⅲ）、第3に、取締役会構成員の多様性に関する開示規制（Nasdaq 上場規則等）（下記Ⅳ）の3点について、以下で取りあげることとする。

Ⅱ. 人的資本 (Human Capital) の情報開示

1. 概説

(1) 従来の開示義務

ア) 開示義務

会社は、年次報告書や登録届出書において、従業員の数を開示することが義務づけられていた（2020年改正前 Reg. S-K 項目 101(c)(1)(xiii)）。

※ SEC のガイダンスでは、契約社員を雇う雇用慣行がある業界では、正規社員に加え、契約社員の数も記載することが求められていた⁶⁾。

イ) 従業員数の開示の意義

³⁾ Cal. SB No. 657 (Sept. 30, 2010).

⁴⁾ Governance & Accountability Institute, Inc., 2022 Sustainability Reporting in Focus 5, http://www.ga-institute.com/fileadmin/ga_institute/images/FlashReports/2022/G_A-2022-Sustainability_Trends_Report.pdf?vgo_ee=bFASwuHthE8fVKdki%2FKrvTvb7N%2FYSF4F%2F19VbQlwnwg%3D

⁵⁾ Jill E. Fisch, Making Sustainability Disclosure Sustainable, 107 Geo. L. J., 923, 944 (2019).

⁶⁾ SEC, Regulation S-K Compliance & Disclosure Interpretations Q. 203.01 (July 3, 2008).

SECの見解：従業員数は、投資家が会社の事業活動の大きさ、規模を評価することに役立つ、従業員数や従業員の種別の変化は、会社の事業活動の動向や変化を示している点で、投資家の投資判断に役立つ（SEC, 2016 Concept Rel., 81 Fed. Reg. at 23936）。

ウ) 開示の状況

上記の従業員の数の開示は、会社によって様々であり、次のような記載も見られた（SEC, 2016 Concept Rel., 81 Fed. Reg. at 23936）。

- ・フルタイムとパートタイムに分けて記載する例
- ・部局ごとに従業員数を特定する例
- ・多数の従業員を雇用している会社では従業員の概数を開示し、労働組合または類似の組織への加入について議論する例
- ・従業員との関係の状況を説明し、従業員が包括的労働協約の適用対象となっているかまたは労働組合によって代表者が立てられているかについて開示する例

エ) 自主的開示

2020年規則改正前から、SECへの提出書類のほか、自主的開示において、人的資本に関する開示を行われてきたが、自主的開示には意欲的な(aspirational)記載やポジティブな議論が伴うことが一般的であり⁷、提供される情報に信頼性の保証はなく、SECによる審査や連邦証券諸法の厳格な虚偽記載責任の対象ともされていないので、その法的位置づけは広告のようなものであったと指摘される⁸。条件の定義も様々であり、計算の仕方も異なるなど、情報の質は一様でなく、一貫性のある情報開示とはなっていなかったし、投資家に比較容易性を与えるものとはなっていなかったと評される（Georgiev 前掲 676-677 頁）。

オ) 2016年のコンセプト・リリース

従来の開示内容のまま（従業員数のみ）でよいか？SECは2016年のコンセプト・リリースでコメントを募集（（SEC, 2016 Concept Rel., 81 Fed. Reg. 23916）） → 開示内容の拡充を提案する多くのコメントがあった。

(2) 人的資本の情報開示の意義・背景

ア) 人的資本の意義

「知識、スキル、能力、その他生涯において取得し、市場環境において製品、サービスまたはアイデアを生み出すために用いられる個人または個人の集まりに備わった特性⁹」を意味している（経済学の領域）。 → 後述のとおり、SECは定義していない。

◆人的資本管理(management)の意義

多義的に使われているが、2つの重要な要素を含んでいる（Georgiev 前掲 644-645 頁）。

①人的資本管理は、会社の人的資源（従業員や契約社員）を長期的な価値をもたらす重要資産

⁷ George S. Georgiev, The Human Capital Management in U.S. Corporate Law, 95 Tul. L. Rev. 639, 676 (2021).

⁸ Gregory H. Shill, The Geography of Human Capital Management, 77 Bus. Law. 679, 686 (2022).

⁹ Sven-Åge Westphalen, REPORTING ON HUMAN CAPITAL; OBJECTIVES AND TRENDS 10 (1999), <https://www.oecd.org/sti/ind/1948014.pdf>.

として扱う。

- ②人的資本管理は、長期的な価値をもたらす労働者の能力に対して寄与するものと認められる事柄（たとえば、労働慣行、従業員の健康や安全、従業員との対話、多様性や多様性の受容）に関係する。

イ) 機関投資家による人的資本管理に関する積極的言及等

2017年、BlackRock 人的資本管理を求める書簡（会社は社内でのトレーニングや教育を改善することにより従業員に対する責任を果たさなければならないとする趣旨）。その後、State Street や Vanguard も同様に人的資本管理を議論し始めた（Georgiev 前掲 668-670 頁）。

また、The Human Capital Management Coalition（2017年当時で2.8兆ドルの資産を有する機関投資家（公的年金基金）のグループ）から SEC コーポレート・ファイナンス局に宛てた人的資本開示を促進する規則制定を求める申立ての書簡（2017年7月6日）¹⁰では、人的資本が会社の最も価値のある資産であり、人的資本を考慮に入れて務めることは価値を維持し増大することに役立つであろう、人的資本に関する情報開示の拡充によって投資家は会社の事業やリスク、見通しを適切に評価できるようになる、多くの実証研究は人的資本の上手な管理がよりよい企業パフォーマンスと関係していることを証明しているなどの主張がなされた。上記 The Human Capital Management Coalition の書簡の影響は大きく、他の ESG の論点とは切り離れた形で提案したものであり、それによって人的資本管理というテーマについて焦点を絞った検討を促したといわれる（Georgiev 前掲 672 頁）。

2018年10月に Jill Fisch 教授と Cynthia Williams 教授が連名で SEC に提出した ESG に関する規則制定の申立てにおいて、上記 The Human Capital Management Coalition の主張を引用しながら人的資本管理の開示の必要性が述べられた¹¹。

ウ) SEC の投資家助言委員会（IAC）の推奨

2019年3月、IAC は人的資本管理の開示を支持する旨の推奨文書を公表¹²。1975年と2015年では、無形資産の価値の割合が5倍増加となっており、知的財産や人的資本のような無形資産の情報の重要性が高まっていること、最近では人的資本は会社の価値の資源として捉えられているにもかかわらず、SEC の伝統的な見方は、人的資本をコストとしてしか捉えておらず、人的資本管理を会社の価値創造の主たる資源としてみる流れに追いついていないこと、実情を反映する SEC の情報開示の枠組みが示されるべきことなどを指摘（IAC 前掲 1-2 頁）。

プリンシプル・ベースでの開示を推奨しつつ、考えられる一定の細目事項を提示し、ただし会社ごとの事情の違い（たとえば「職場の安全性」は鉱山会社では重要情報であるが、ソフトウェア会社では重要ではない）に配慮すべきと指摘（IAC 前掲 3-5 頁）。

¹⁰ <https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>

¹¹ Cynthia Williams & Jill E. Fisch, Request for rulemaking on environmental, social, and governance (ESG) disclosure (Oct.1, 2018), <https://digitalcommons.osgoode.yorku.ca/reports>

¹² SEC Investor Advisory Committee, Recommendation of the Investor Advisory Committee Human Capital Management Disclosure (Mar. 28, 2019).

エ) SEC の考え方 (2019 年・2020 年)

規則改正に際して述べられた SEC の見解：改正前 Reg. S-K 項目 101(c)(1)(xiii) が定められた当時、会社はその価値を高めるために有形固定資産に大きく依存してきたが、今日では多くの会社にとって無形資産が必須の経営資源となっている¹³。

人的資本 → 多くの会社にとって重要な資源であり、また経営者の重要関心事であり、さまざまな形で、経営成果の重要な原動力となるもの。よって、多くの場合、投資家にとって人的資本の開示は重要な情報である¹⁴。

2. 改正内容

(1) 規定の新設

[2020 年 11 月 9 日以降に SEC に提出される年次報告書・登録届出書に適用]

旧 Reg. S-K 項目 101(c)(1)(xiii)を削除して、項目 101(c)(2)(ii)を新設

「(2) 登録者の事業全体に関して、かつ、事業全体の理解に重要な(material)範囲で、本項目の(c)(2)(i)および(ii)に規定された情報について議論すること。ただし、当該情報が特定のセグメントに重要なものであるときは、追加的に当該セグメントを特定すべきである。」

「(ii) 登録者によって雇用される者の数を含む登録者の人的資本資源の記述、および登録者が事業を営む上で重視する(focus on)人的資本の施策(measures)または目的（たとえば、登録者の事業および労働力の性質に応じて、人材の開発、人材を引きつける魅力および人材の維持に対処する施策または目的など）の記述。」

(2) SEC の説明

ア) 人的資本の定義

規則提案へのコメントでは、「人的資本」の定義を設けるべきとするものもあったが、反対もあった。反対のコメントには、人的資本が多義的であり、個々の会社の状況や目的に合わせる形で用いられているものであること、人的資本管理といってもそれを評価する標準的な方法はなく、業界や会社により様々な要素が影響する複雑な概念であること、などが述べられていた。

SEC の見解：この用語の意義は時間とともに発展しうるものであり、業界特有の方法で様々な会社によりそれぞれ定義されうるものであることから、「人的資本」の定義規定を設けなかった (85 Fed. Reg. at 63739)。

イ) 従業員数の開示の維持

改正後の規則：事業の理解に重要な範囲で、従業員数の開示が要求される。

維持された理由：事業を理解するのに重要な (material) 重要かつ有用な情報を投資家に提供

¹³ SEC, Rel. No. 33-10668 (Proposal Rule), Modernization of Regulation S-K Items 101, 103, and 105 (Aug. 8, 2019), 84 Fed. Reg. 44358, 44370 (Aug. 23, 2019).

¹⁴ SEC, Rel. No. 33-10825 (Final Rule), Modernization of Regulation S-K Items 101, 103, and 105 (Aug. 26, 2020), 85 Fed. Reg. 63726, 63739 (Oct. 8, 2020).

するものであるから。事業活動の大きさや規模を評価し、経時的な変化を評価するのに役立つ。また、人的資本の管理についての議論を補足し、基礎的な事情を示すものとなる (85 Fed. Reg. at 63740)。

ウ) 従業員数以外の事項

プリンシプル・ベースの規制手法に適しないので、フルタイム・パートタイム別の数、臨時社員の数、離職率などの指標は採用しなかった (85 Fed. Reg. at 63740)。会社の判断に委ねられている。SEC への書簡の中 (→下記 cf.) には、投資家が必要な情報を見つけやすく、一貫性と比較容易性をもたらすことから、細目の指標の採用を求めるものがあったが、規則提案リリースでは、「事業の理解に重要な範囲で、会社の資源を投資家により理解させ評価させ、そして資源がどのように管理されるのか経営者の目を通して見えるようにする人的資本に関する開示を引き出すことを意図している。」「すべての会社に対し、固定的で特定の項目別の開示を要求することは最も有意義な開示とはならない。」と述べており (84 Fed. Reg. at 44370-71)、規則採択リリースも同じ立場。すなわち、パートタイム・フルタイムの従業員、契約社員、臨時社員、離職率などの施策が事業の理解に重要な範囲で、会社は開示しなければならないとされる (85 Fed. Reg. at 63740)。

cf. Human Capital Management Coalition から SEC コーポレート・ファイナンス局に宛てた 人的資本開示を促進する規則制定を求める申立ての書簡 (2017 年 7 月 6 日)¹⁵

①労働者の人口統計 (フルタイムとパートタイムの従業員の数、派遣労働者の数、下請けと外注の方針と利用)、②労働者の安定性 (離職率 (自主的および非自主的)、内部雇用率)、③労働者の構成 (多様性、賃金の公平性の方針・監査・比率)、④労働者のスキルおよび能力 (トレーニング、事業戦略との調整、技能不足)、⑤労働者の文化および権利 (従業員との対話、組合の代表者、ワークライフ・バランスの促進)、⑥労働者の健康と安全 (労働災害、死亡者、休業率)、⑦労働者の生産性 (労働者の費用対効果、フルタイム従業員 1 名あたりの利益/収益)、⑧人権へのコミットメントとその実施 (リスクを評価するために用いる原則、顧客層との協議のプロセス、供給者のデュー・ディリジェンス)、⑨労働者の報酬とインセンティブ (執行役員以下の従業員に用いられるボーナス指標、インセンティブによって生ずるリスクを相殺するための施策)

前年に従業員のトレーニングに支出した金額のようなルール・ベースの開示と、トレーニングの支出がどのように事業戦略につながるかのようなプリンシプル・ベースの開示の両方とも、人的資本管理についての価値のある情報を投資家に提供する。SEC は開示要件を策定する際に、これら 2 つのアプローチの適切なバランスを判断する必要があるだろう。(26~27 頁)

→ しかし結局、SEC は完全なルール・ベース開示を不採用¹⁶

¹⁵ <https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>

¹⁶ Amanda M. Rose, A Response to Calls for SEC-Mandated ESG Disclosure, 98 Wash. U. L. Rev. 1821, 1838 (2021). 規則提案に対し、Human Capital Management Coalition の提案に沿った細目的な規定とすることを求めるコメントが多かったという (Id. at 1839)。

エ) 施策と目的

「人材の開発、人材を引きつける魅力および従業員の維持に対処する施策または目的」
→ 例示であって常に開示が求められるものではない。人的資本の管理に関する施策および目的は、時間の経過とともに発展しうるものであり、会社が事業を行う業界や、地域、国、全体的な戦略、その時のマクロ経済の状況や国または世界の健康状態のような人的資本資源に影響を与える他の条件などによって左右されうるものであるから、細目的な要件は定められなかった。その会社の特有の事業、労働力、および事実や状況に応じた開示が期待されている (85 Fed. Reg. at 63739)。

オ) プリンシプル・ベースの開示方法

人的資本の考慮には上に述べたような多様性や発展がありうるため、細則を定める方法より、プリンシプル・ベースでの開示の方がより意味のある開示につながる。会社は、その置かれた状況に適した形で開示を行うことができ、柔軟性をもつ方法を採用したと説明 (85 Fed. Reg. at 63739)。

3. 検討

(1) プリンシプル・ベースであること

SEC は、改正後 Reg. S-K 項目 101(c)(2)(ii) について、今のところガイダンスを提示していない。規定は、SEC が述べるように、プリンシプル・ベースを採用している。SEC がプリンシプル・ベースの方法を堅持したのは、人的資本に関する情報が、他のタイプの情報が標準化されてきたのと同じように標準化され得ないものであると SEC が考えたからなのかもしれない (Georgiev 前掲 722-723 頁)。

SEC は明示していないが、この箇所での開示には、多様性への取組み、ジェンダーの公平性、従業員の労働条件 (健康や安全を含む) などが記載されることになる想定されている (O'Hare 前掲 437 頁)。もっとも、学説上、ガイダンスもなく、具体的な情報の指示もない、このような規定のもとでは、定型的な (boilerplate) 開示を生じさせる可能性があり¹⁷、投資家が必要とし、投資判断に必要とされる情報を引き出すことができるのかといった疑問や、会社の裁量が大きいのので開示しない方が合理的であると考える会社は開示を回避することができるようになるのではないかといった批判が述べられている (Georgiev 前掲 718-719 頁)。

規定の「重要な範囲」という materiality の意味について、SEC は項目 101、103 および 105 には共通して、1934 年法規則 12b-2 および 1933 年法規則 405 において定義された「material」が適用されると SEC は解する (85 Fed. Reg. at 63745)。ここで定義されている material は、連邦最高裁が TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976) で示した内容と一致するものである。したがって、合理的な投資家が投資判断をするに際して当該情報を重要であ

¹⁷ Cynthia A. Williams & Donna M. Nagy, ESG and Climate Change Blind Spots: Turning the Corner on SEC Disclosure, 99 Tex. L. Rev. 1453, 1479-1480 (2021).

ると考える相当の蓋然性(substantial likelihood)があるかどうか、別の言い方をすれば、当該事実が開示されたならば利用可能な情報の総体が著しく変わると合理的な投資家が考える相当の蓋然性があるかどうか、が基準となる。

しかし、たとえば職場の健康状態や安全性について、投資家は他の会社との比較で標準より状況が著しく悪ければ、それは「重要な」情報となって会社は開示を要することとなるのであって、会社が他社の同じ情報を知ることなく、その情報自体を重要であると判断することはできないのではないかと、といった問題が提起されている (Georgiev 前掲 721-722 頁)。

改正は柔軟かつより控えめな(modest)改革であったと評価される¹⁸一方で、規則改正後も依然として、機関投資家および非営利組織から、より多くの定量的データを求める要望が見られるようである¹⁹。学説上も、今後のさらなる改正があるなら、より細目的な開示方法へと移行することが望ましく (SASB の基準の採用を提案)、またすべての開示は黙示的に重要な情報に限られているのであるから、重要性の判断を取り除くべきであると主張する見解もみられる (Cynthia & Nagy 前掲 1480 頁、Ho・2022 年前掲 334 頁)。

(2) 開示の状況

施行日の 2020 年 11 月 8 日から 2021 年 2 月 15 日の間に提出された年次報告書の Reg. S-K 項目 101(c)(2)(ii)の開示状況の調査 (S&P500 のうち 143 社)²⁰によれば、分量は 1 段落のものから 3 頁に及ぶものまであり、大きな差があった。大多数の会社は、人的資本をどのように考えているかという定性的開示を行っていた。そこには、明確に示すための数値と要点の説明が含まれていた。

約 3 分の 2 の会社は、従業員数に加え、少なくとも 1 つの特定の数値または指標を含んでいた。たとえば、地理による分類、パートタイムとフルタイム従業員の数、包括的労働協約の対象となる従業員の割合、ジェンダーを含むものや、離職率、従業員との対話、業務災害発生率などを含むものがあった。

議論のテーマとしては、多様性と多様性の受容、従業員のベネフィット (報酬や他の利益、健康も含む)、従業員の修得および発展が割合的に多く、そのほか従業員の安全性、従業員との対話・アンケート結果 (満足度)、報酬の考え方、COVID-19 の影響などの議論の記載もあった。

Ⅲ. 気候変動関連 (Climate Change Related) の情報開示

1. 概説

(1) 従来の環境・気候変動に関する情報開示

¹⁸ Virginia Harper Ho, Modernizing ESG Disclosure, 2022 U. Ill. L. Rev. 277, 281 (2022).

¹⁹ Bourveau, Thomas and Chowdhury, Maliha and Le, Anthony and Rouen, Ethan, Human Capital Disclosures 28 (Sept. 24, 2022), SSRN: <https://ssrn.com/abstract=4138543>

²⁰ Harvard Law School Forum on Corporate Governance, Human Capital Disclosures Findings From 2020 10-Ks, Posted by Neri Bukspan and Marc Siegel, EY (May 25, 2021), <https://corpgov.law.harvard.edu/2021/05/25/human-capital-disclosures-findings-from-2020-10-ks/>

ア) 1971年・1973年の解釈リリース²¹

1933年法・1934年法上で定められた規則や様式（10-KやS-1のInstruction）において、「事業」についての記載には、大気汚染等の環境上の質に関して法定要件を遵守することが、多額の支出、収益力への重大な影響または事業の重要な変更を生じ得るときは、それが重要な場合、開示すべき。環境保護のための連邦・州・地域の規制のもとで生じた重要な手続きは、「法的手続き」において開示すべき²²。1973年の規則改正で、会社およびその子会社の支出、収益および競争上の立場に対する環境に関する法律・規制の遵守が及ぼし得る重要な影響に関して、「事業」の項目で記載すべき旨を明記。また、環境保護に関する連邦、州または地域の規制上生じた行政上または司法上の手続きは、「法的手続き」への記載が免除される「事業に付随して生じる日常的な訴訟」には該当しない旨、事業や財務状態に重大な影響がある場合または連結ベースの資産額の10%を超える請求金額を求める訴訟である場合には開示が求められる旨を明記²³。

イ) 2010年のSECによるガイダンス

国内外でのGHG排出量への関心、規制の拡がりを背景に、気候変動関連の現行の情報開示規制に関するSECの見解を述べたもの²⁴

→ 気候変動に関する開示が要求され得る非財務情報開示（Reg. S-K）項目として、①事業の状況、②法的手続き、③リスク要素、④経営者の議論と分析（MD&A）

<ex.> 気候変動に関する連邦・州の立法・規制といった展開、事業に重大な影響を与える条約・国際協定、気候変動による重大な物理的影響などは、①～④の開示を要する事由となるとの見解（75 Fed. Reg. at 6295-6297）

前出の2016年SECによるコンセプト・リリースで、Reg. S-Kにおいて気候変動に関する情報開示を義務付けるべきかコメントが求められたところ、10,100件のコメントのうち、10,070件が開示義務化を支持するものであったという²⁵。しかし、ESGや気候に関する開示は、有意義な開示義務の枠組みを作ることが極めて困難であることも1つの理由となっており、SECの規則制定への動きは停滞していたようである（Cynthia & Nagy 前掲 1478頁）。

他方で、多くの大規模会社は、GRI（Global Reporting Initiative）、SASB（Sustainability Accounting Standards Board）、TFCD（Task Force on Climate-Related Financial Disclosure）、

²¹ 公民権に関する要件のもとで政府との取引が中止・終了等の結果を生じたときは、それが重要な場合、「事業」についての記載において開示すべき、公民権法上の手続きまたは他の差別禁止規制上の制裁等があった場合、それが重要であれば、「法的手続き」において開示すべき、といった見解も示された。

²² SEC, Rel. No. 33-5170 (Interpretative Release), Disclosure Pertaining to Matters Involving the Environment and Civil Rights (July 19, 1971), 36 Fed. Reg. 13989 (July 29, 1971).

²³ SEC, Rel. No. 33-5386 (Final Rule), Disclosure With Respect to Compliance With Environmental Requirements and Other Matters (July 3, 1973), 38 Fed. Reg. 12100 (May 9, 1973).

²⁴ SEC, Rel. No. 33-9106 (Interpretation), Commission Guidance Regarding Disclosure Related to Climate Change (Feb. 2, 2010), 75 Fed. Reg. 6290 (Feb. 8, 2010).

²⁵ Andrew W. Winden, Jumpstarting Sustainability Disclosure, 76 Bus. Law. 1215, 1217 (2021).

CDP (旧 Carbon Disclosure Project) といった第三者の提供するフレームワークを用いて、自主的開示を行ってきた。しかし、これには多くの論者や SEC が指摘するように、それぞれの基準設定機関において開示項目、範囲、測定方法、フォーマットなどが違うことなどから²⁶、一貫性、比較容易性、信頼が欠けているとの指摘がなされてきた²⁷。

(2) 気候変動関連開示制度の提案理由 (2022 年 3 月)

2010 年のガイダンス以降、気候関連の影響が十分に裏付けられるようになり、事業や経済に対する気候関連リスクの認識が高まってきたことから、投資家は、会社の事業に対する気候関連の影響や気候関連リスクへの対処についての詳細な情報を求めるようになった (87 Fed. Reg. at 21337)。また気候関連の開示に関するフレームワークが発展し、なかでも TCFD(Task Force on Climate-Related Financial Disclosure)²⁸のフレームワークは、多くの国や企業で支持され、他の気候関連開示フレーム設定機関にも採用あるいは導入されていることや、GHG 排出量を測定・報告する基準として GHG プロトコルが発展してきている (87 Fed. Reg. at 21343-21345)。

気候関連のリスクおよびそのようなリスクを反映した数値についての情報は、公開会社の財務成果(performance)や立場に影響を及ぼし得るものであり、かつ、投資家が投資判断および議決権行使をする際に重要となり得るものであると考える。会社は、投資家からの要請を受け、また事業に対する気候関連リスクの潜在的な財務上の影響を認識し、自主的な情報提供を始めているが、現在行われている情報開示は投資家を十分に保護するものではないことが懸念され、気候関連開示の一貫性、比較容易性および信頼を向上させるためには追加的な開示義務が必要ないし適切であるとする (87 Fed. Reg. at 21335)。

より一般的に気候関連問題に対処するものではなく、投資家保護、公正で秩序のある効率的な市場の維持、および資本形成を促進するという SEC の任務に基づく提案であること (87 Fed. Reg. at 21336)

2. 規則案の概要

- ・ Reg. S-K に Subpart229.1500 (気候関連開示) を新たに設け、項目 1500~1507 新設
 - ・ Reg. S-X に Article14 (気候関連開示) を新たに設け、14-01 条、14-02 条を新設
- 1934 年法 13 条(a)または 15 条(d)に従い継続開示を行う登録会社の年次報告書
1933 年法の登録届出書
<パブコメ期限 2022 年 5 月 20 日→同年 6 月 17 日に延長²⁹>

²⁶ Dan Esty & Todd Cort, Toward Enhanced Corporate Sustainability Disclosure: Making ESG Reporting Serve Investor Needs, 16 Va. L. & Bus. Rev. 423, 433-438 (2022).

²⁷ Thomas Lee Hazen, Social Issues in the Spotlight; The Increasing Need to Improve Publicly-Held Companies' CSR and ESG Disclosure, 23 U. Pa. J. Bus. L. 740, 751 (2021).

²⁸ 2015 年 4 月の G20 財相会議による金融安定化理事会 (FSB) への気候関連問題に対処する方法の検討の指示を受けて、投資家への情報開示を担当するタスクフォースとして設置されたもの (87 Fed. Reg. at 21343)。

²⁹ SEC, Rel. No. 33-11061; 34-94867 (May 9, 2022).

3. 気候関連リスクに対するガバナンスの開示 (1501 条)

(1) 気候関連リスク (Climate-related Risk) の定義 (1500 条(c))

「登録者の連結財務諸表、事業運営またはバリューチェーン（川上および川下の活動。川上：原材料の調達や加工、登録者へのサプライヤー。川下：完成品への加工、その加工、エンドユーザーへの提供、製品の使用、製品寿命に達したものの処理）に対し全体として、気候関連条件および事象の現実のまたは潜在的な否定的影響」をいう。

→ これには、つぎの①と②が含まれる。

①物理的リスク（短期的リスク [ハリケーンや洪水のような短期間の異常気象によって生じるリスク]・長期的リスク [温暖化、海面上昇、干ばつ、山林火災のような長期的な天候パターンに關係するリスク] を含む)

②移行リスク（気候関連リスクの軽減・適応に対処するため、規制上、技術上および市場の変化に起因する登録者の連結財務諸表、事業運営またはバリューチェーンに対する現実または潜在的な否定的影響（規制への適合のためのコスト増加、炭素集約製品の市場の需要の低下による値下げ・減収など）が含まれる。

※ 下記 (2) (3)；登録者が気候関連リスクに適切に対処している範囲を評価し、リスクが投資の価値に影響するか否か、投資家の判断に役立つ。TCFD と同じ枠組みを採用 (87 Fed. Reg. at 21359)。

(2) 取締役会の監視に関する説明の記載 (1501 条(a)(1))

①気候関連リスクの監視に責任を負う取締役会メンバーまたは取締役会の委員会（ex.監査委員会、リスク委員会、気候関連リスクに専ら対応する委員会）

②取締役会メンバーに気候関連リスクに専門性を有するものがあるか否か、その専門性の内容の詳細

③取締役会または委員会が気候関連リスクについて議論する手続き。どのように当該リスクを知らされ、どのくらいの頻度で議論するかを含む。

④取締役会または委員会が、気候関連リスクを事業戦略、リスク管理および財務の監視の一部として考えているか否か、どのように考えているか。

⑤取締役会または委員会が気候関連の目標を設定しているか否か、目標に向けた進捗を監視する方法

* 気候関連機会の監視について説明してもよい (1501 条(a)(2))。

(3) 経営者の評価・管理の役割に関する説明の記載 (1501 条(b)(1))

①経営者または委員が気候関連リスクの評価および管理に責任を負うか否か、負う場合その経営者の立場または委員の特定およびその専門性の詳細

②上記①の者が気候関連リスクを知らされる手続き

③上記①の者が取締役会または委員会に気候関連リスクについて報告するか否か、頻度

* 気候関連機会の評価・管理について説明してもよい (1501 条(b)(2))

4. 気候関連リスクの開示 (1502 条、Reg. S-X の Rule14-02)

(1) 事業・財務への影響の説明 (1502 条(a))

登録者に合理的にみて重要な影響を与えそうな気候関連リスクの説明。SEC はこの情報が将来の予測情報(forward-looking information)に該当すると考えているようであり、1933 年法 27A 条および 1934 年法 21E 条のセーフハーバー規定の適用があると考えているようだ (87 Fed. Reg. at 21352)³⁰。影響の期間につき短期・中期・長期 (定義はなく登録者が判断) を明示してもよい (may manifest)。

* 気候関連機会について説明してもよい。

それが物理的リスクか移行リスクか、および、リスクの内容 (下記①②) の説明

①物理的リスクの場合、短期的・長期的のいずれか、物理的リスクの影響を受ける財産、加工、運営が行われる場所とその内容を含む (1502 条(a)(1)(i))。

②移行リスクの場合、規制、技術、市場、責任、評判その他移行関連の要素との関連およびそれがどのように登録者に影響を与えるか、を含む (1502 条(a)(1)(ii))。

(2) 事業戦略・ビジネスモデル・見通しへの影響の説明 (1502 条(b))

ア) 上記 (1) で特定された気候関連リスクの登録者の戦略、ビジネスモデルおよび見通しに与える現実のおよび潜在的な影響 (事業運営、製品またはサービス、サプライヤーおよびバリューチェーンの他の者、気候関連リスクの軽減・適応の活動、調査・開発の支出、他の重大な変更・影響、各影響の期間) の説明 (1502 条(b))。

イ) 上記アの影響が事業戦略、財務計画および資金配分の一部として考慮されているか、どのように考慮されているかについての議論。気候関連リスクの推測がビジネスモデルまたは戦略に取り込まれていたかについての理解を容易にする現状および予測(forward-looking)の開示。上記議論には、Reg. S-X の Rule14-02 や 1504 条の指標、1506 条の目標がどのようにビジネスモデルや事業戦略に関係するかを含むこと (1502 条(c))

ウ) 上記 (1) で特定された気候関連リスクが連結財務諸表に影響を与えたかまたは影響を与えそうであるか、どのように影響を与えまたは与えそうなのかについて、Reg. S-X の Rule14-02 の気候関連数値を含んだ、文章体により(narrative)議論すること (1502 条(d))。

エ) 気候関連リスクの将来の変化を考慮した事業戦略の弾力性(resilience)の説明。気候関連リスクの影響を評価し、戦略やビジネスモデルの弾力性を裏付けるために用いるシナリオ分析 (1500 条(o)) のような分析手法の説明 (1502 条(f))。SEC は、シナリオ分析が将来の予測情報に当たるため、連邦証券諸法のセーフハーバー規定の適用の可能性があると考えている (87 Fed. Reg. at 21357, 21359)。

(3) 連結財務諸表の注記への記載 (Reg. S-X の Rule14-02)

Reg. S-X の Rule14-02 の事項 (気候関連の条件・事象および移行活動の影響など) を連結

³⁰ ただし、SEC も指摘するように、連邦証券諸法の上記のセーフハーバー規定は IPO に関連して行われた将来の予測情報を適用除外としているため、その場合の登録届出書の記載には保護が及ばないことになる。87 Fed. Reg. at 21352.

財務諸表の注記に記載する (Rule14-01)。

→ 1502条(d)の文章体による開示(上記(1))を完全なものに(補完)するため(87 Fed. Reg. at 21365)

連結財務諸表の個別項目に係る様々な影響(正も負も)の合計額が当該個別項目の総額の1%未満(less than 1%)であるときは開示義務を負わない(Rule 14-02(b))。個別項目ごとに否定的影響の合計額、積極的影響の合計額のそれぞれを開示

厳しい天候・その他自然条件(Rule14-02(c))の場合(87 Fed. Reg. at 21366-21367)

個別項目	F/S 記載	事象 A・B の影響	事象 C の影響	移行活動 D の影響	影響の合計額	影響の%
営業原価	\$ 1000 万	-\$ 30 万	+\$ 7 万	+\$ 9 万	\$ 46 万	4.6%

→ 【注記】

個別項目	気候関連事象の否定的影響の合計	気候関連事象の肯定的影響の合計	気候関連移行活動の否定的影響の合計	気候関連移行活動の肯定的影響の合計
営業原価	\$ 30 万	\$ 7 万	—	\$ 9 万

< 開示内容 > Rule14

-02(c)~(i)

- ① 厳しい天候その他自然条件の影響(洪水、干ばつ、山林火災、異常気温、海面上昇など)
 - ② 移行活動に関連する影響(GHG 排出量の減少・移行リスクの影響緩和の努力の影響)
 - ③ 厳しい天候その他自然条件によるリスクを緩和するための支出(資産や事業運営の弾力性向上、資産の移転など)
 - ④ 移行活動に関連する支出(GHG 排出量の減少・移行リスクの影響の緩和のコスト。GHG 排出量削減の目標を設定したときは、それに要した年間費用)
 - ⑤ 厳しい天候その他自然条件の影響を受ける財務上の見積もり・前提(該当する場合、当該事象が見積もり・前提にどのように影響するか説明)
 - ⑥ 移行活動の影響を受ける財務上の見積もり・前提(該当する場合、当該移行活動が見積もり・前提にどのように影響するか説明)
 - ⑦ 気候関連リスクの影響(物理的リスクと移行リスクのそれぞれのリスクの影響)
- * 気候関連機会の開示をしてもよい。その後も継続する義務(Rule14-02(j))。

5. リスク管理の開示(1503条)

(1) リスク管理のプロセスの説明

登録者が気候関連リスクの特定、評価および管理のために有する手続き(気候関連機会の記載も可) → 会社が気候関連リスクを特定、評価および管理する十分な手続きを実施しているかは投資家の投資判断に役立つ(87 Fed. Reg. at 21361)

ア) 特定および評価の手続きについて、以下の方法を記載(1503条(a)(1))

- ①他のリスクに比して気候関連リスクの相対的な重要性をどう判断したか。
 - ②気候関連リスクの特定にあたり、現行または将来の規制上の要件または政策をどう考慮したか。
 - ③潜在的な移行リスクを評価するにあたり、顧客や取引相手の選好の変化、技術の変化または市場価格の変化をどう考慮したか。
 - ④特定した気候関連リスクの範囲と影響をどう評価したかを含む、気候関連リスクの重要性をどう判断したか。
- イ) 管理の手続きについて、以下の方法を記載 (1503 条(a)(2))
- ①特定のリスクを軽減、受容または適応するか否かをどう決定したか。
 - ②気候関連リスクへ対処するか否かについてどう優先順位をつけたか。
 - ③優先度の高いリスクを軽減する方法をどう決めるか。
- ウ) 上記ア、イの手続きが登録者の全社的なリスク管理システム・手続きに組み込まれているか否か、どう組み込まれているのか開示。ある別の委員会が気候関連リスクの評価・管理に責任を負っているならば、当該委員会が取締役会または経営者の委員会とどのように関わり合うのか開示 (1503 条(b))

(2) 移行計画 (Transit Plan) の説明

移行計画…気候関連リスク軽減のための登録者の戦略および実施計画 (1500 条(s))

SEC は、移行計画が将来についての判断や予測を要するものであることから、その記載が将来の予測情報に当たるとして、連邦証券諸法のセーフハーバー規定の適用の可能性があることを述べている (87 Fed. Reg. at 21362, 21363)。

- ア) 経営戦略として移行計画を策定している場合、その計画 (リスクの特定および管理に用いた数値や目標を含む) の説明。毎年この開示を更新し、計画目標の達成のためにとった行動を説明 (1503 条(c)(1))
- イ) 移行計画を策定している場合、特定の物理的リスクおよび移行リスクの軽減または適応のためにどのように計画しているのかについての議論 (1503 条(c)(2))
 - * 気候関連機会を達成するための計画を説明してもよい (1503 条(c)(3))

6. GHG(Greenhouse Gas : 温室効果ガス)排出にかかる数値の開示 (1504 条)

(1) GHG 排出量等の開示の意義

ア) 開示される情報

定量的で比較可能、移行リスクの分析に役立つ、ネットゼロの公約の進捗を評価でき、それに伴うリスクを評価できる情報、資金調達の可能性に影響する情報、規制・政策・市場の要請による炭素使用量の減少能力に影響する情報

→ 投資家の投資判断にとって重要 (87 Fed. Reg. at 21373)

→ 直近の事業年度および提出される連結財務諸表に含まれる過去の事業年度分と同じ年度分について開示義務を課す (1504 条(a))。毎年の傾向が分かるし、GHG 排出量が連結財務

諸表と関係していると考えられ、また財務情報と関連付けて読まれるであろうから (87 Fed. Reg. at 21383)。

※GHG 排出量についてスコープの概念を使用。国際的な報告基準である GHG プロトコルの基準に類似するものを採用。一般的な自主的開示で使用されており、遵守コストの負担を抑えられる (87 Fed. Reg. at 21374)。

※GHG：二酸化炭素、メタン、亜酸化窒素、三フッ化窒素、ハイドロフルオロカーボン、ペルフルオロカーボン、六フッ化硫黄の7種 (1500条(g))

→ スコープ1~3の開示では、上記の種類ごとおよびGHG全体のCO₂e (CO₂に換算したもの) 両方の記載が必要。オフセット分は除外 (1504条(a)(1)(2))

※GHG 排出量…直接的または間接的なGHG 排出量 (1500条(h))

イ) 開示の必要性

・大規模機関投資家・金融機関は2050年までのネットゼロ経済の達成 (2030年までの中間目標も) を宣言。ポートフォリオに含まれる会社または取引相手である会社のGHG排出量を減少させるよう働きかけるため、またネットゼロに関する進捗を評価するため、さらに関係する資産評価減や貸金のデフォルトリスクを評価するため、データが有用 (87 Fed. Reg. at 21376-21377)

・投資家は従来から専門家のGHG排出量データを購入していたが、一貫性、比較容易性、信頼性を欠いていたというSECの見解 (87 Fed. Reg. at 21375)

ウ) スコープ1~3の定義 (1500条(p)(q)(r))

①スコープ1：登録者が所有または支配する事業運営から生ずる直接的なGHG排出量

②スコープ2：登録者が所有または支配する事業運営により消費される電気、蒸気熱、冷房から生ずる間接的なGHG排出量

③スコープ3：スコープ2以外の間接的なGHG排出量であって、登録者のバリューチェーンの川上・川下の活動において生ずるもの

*川上の活動によるGHGの例：登録者が購入した商品・サービス、商品の輸送、従業員の出張・通勤などにより生ずるもの (1500条(r)(1))

*川下の活動によるGHGの例：登録者が売却した製品の使用・加工・輸送・販売、その製品寿命による廃棄処分などにより生ずるもの (1500条(r)(2))

(2) スコープ3の排出量の開示

ア) 一定条件のもとでの開示義務

スコープ1とスコープ2は、それぞれ分けて開示する義務 (1504条(b)(1))

・排出の大規模な固定汚染源(直接排出源)をもつ会社は、すでにスコープ1排出量をEPAに提出しており、またスコープ2排出量の算定についてもEPAがガイドラインを出している。

→ 他方で、スコープ3排出量は、典型的には、登録者のバリューチェーンにおける第三者の活動から生ずるもの。第三者から適切なデータを集め、排出量を算出することは、スコープ

1・2より難しい。その一方で、スコープ3の排出量は、多くの会社にとってGHG排出量全体の大部分（登録者のGHGフットプリント全体の大部分）を占めるものなので、その情報は会社の気候関連リスクによる影響やその完全な全体像を知って評価し、規制・政策・市場の圧力による炭素使用量の削減に対する戦略を進展させているのかどうか投資家が評価する際に役立つ（87 Fed. Reg. at 21377-21378）。さらに、登録者が炭素集約的な活動を外部委託（outsourcing）して自らのスコープ1と2の排出量を減少させる行為も、スコープ3の開示により透明性が保たれる（87 Fed. Reg. at 21379）。

◆スコープ3の開示義務が生ずる場合（1504条(c)(1)） / 一律に開示義務を課さない

- ┌ ・その排出量が重要(material)である場合 または
- └ ・スコープ3を含むGHG排出量削減の目標を設定した場合

→ データ収集および算出の困難と、情報の重要性のバランスをとった結果（87 Fed. Reg. at 21377）

*小規模報告会社はスコープ3開示の適用除外（1504条(c)(3)）

イ) 排出量が重要である場合

重要かどうかの判断は登録者がする。

「重要な」・・・SECは従来の判例（TSC Industries 判決）の立場と同じ意味と解する。

→ 投資判断を行う際に合理的な投資家であればそれを重要であると考え実質的な蓋然性がある場合、「重要な」に当たる（87 Fed. Reg. at 21378）。

SECの見解：重要性を判断するための数値基準（たとえば、全体の排出量の40%以上）は設けない。重要性は、定性的情報の評価も含め、利用可能な情報の総体(total mix)で判断されるべきであるから。したがって、全体の排出量に占める割合が比較的小さい場合であっても、スコープ3が重大なリスクを示し、重要な規制の注目対象となっているような場合には、「重要な」に該当する可能性がある。また重要性が、未実現の移行リスクのような将来の影響の判断を要するものであるときは、事象が生ずる可能性とその程度が考慮されるべきであり、可能性が比較的低くても損失や責任の程度が高ければ、「重要な」に当たりうる（87 Fed. Reg. at 21379）。

ウ) GHG排出量削減目標を設定している場合

投資家は、登録者が目標達成するために必要となる行為の規模・範囲および財務への影響を理解することができ、登録者の戦略や進捗度を評価することができる。また環境配慮を偽る、いわゆる「グリーンウォッシング(greenwashing)」の防止にも役立つ（87 Fed. Reg. at 21379）。

エ) 開示事項（1504条(c)(2)）

①排出量の算出に用いたデータソースの説明、②バリューチェーンの者から報告された排出量、この報告された排出量が登録者または第三者によって確認(verify)されているか否か、③バリューチェーンの者から報告された特別な活動に関するデータ、④業界の平均排出量、活動または経済的データを含む、経済研究、公表されたデータベース、政府統計、業界の団体その他登録者以外の第三者から取得したデータ

(3) GHG の程度に関する開示

スコープ 1 およびスコープ 2 の合計を用いて、収入総額単位の GHG 排出量および製品単位の GHG 排出量を開示。スコープ 3 を開示する場合は、スコープ 3 排出量を用いて別に開示 (1504 条(d)(1)(2))

→ 排出量率が分かるようになる。たとえば、自動車製造業者 A 社は同業の B 社より多くの CO₂e を排出しているが、製品単位の排出量をみると、A 社の方が B 社よりも排出量率(rate)が低い。移行リスクによる影響の可能性を表す指標として、投資家の投資判断に役立つ (87 Fed. Reg. at 21382)

(4) GHG 排出量算出の方法等に関する説明

ア) 開示事項 (1504 条(e)(1))

- ・排出量算出に用いた方法、重要なデータ、重要な前提の説明
- ・方法の説明には、組織上の範囲 (1500 条(m))、事業上の範囲 (1500 条(l)：工場やオフィスその他事業施設内の排出源の範囲)、計算方法、計算ツールを含むこと
- ・スコープ 1・2 の分類の判断方法の説明
 - * 組織上の範囲：登録者によって所有または支配されている事業(operation)の範囲。連結財務諸表に適用される会計原則と同じ範囲とされるので (1504 条(e)(2))、登録者は連結会社からのすべての排出量を含めなければならない (87 Fed. Reg. at 21384)。

イ) 範囲の統一の利用 (1504 条(e)(3))

- ・組織上の範囲は、スコープ 1~3 を通じて同じ基準を用いること
- ・いったん組織上・事業上の範囲を定めたら、GHG 排出量算出の際にその範囲の利用で一貫していなければならない。過去の排出量を追跡し、比較容易にするため (87 Fed. Reg. at 21385)

ウ) 計算方法

一般的に受け入れられている排出量の計算方法は、公表されている「排出量要素 emission factor：1500 条(e)」の利用。ex. EPA の排出量要素や GHG プロトコルの排出量算出ツールの要素。要素には、使用電力の kw/h、使用燃料量、操業時間、出張距離など。それらの要素から GHG 排出量の絶対値を導き出せるようになっている (87 Fed. Reg. at 21386)。一定の経済的データを用いてもよい (1500 条(e))。

- * 基礎となる前提と理由を示せば、GHG 排出量の計算に合理的な見積もりを用いることができる。第 4 四半期のデータが利用可能でなく、年次報告書提出時期に間に合わず、第 4 四半期だけ見積もりとなるような場合 (87 Fed. Reg. at 21387)。また、基礎となる前提と理由を示せば、スコープ 3 の排出量の見積もりに一定のレンジ(幅)の形で表示できる (1504 条(e)(4)(i)(ii))。必要なすべてのデータを入手するのが困難だから (87 Fed. Reg. at 21388)。
- * いずれのスコープに関係なく、第三者提供のデータを排出量算出に用いる場合、そのデータのソース等を開示しなければならない (1504 条(e)(5))。第三者から提供されるデータを

利用することが一般的と考えられる、スコープ3に主に関係する(87 Fed. Reg. at 21387)。

(5) スコープ3に関する情報開示とセーフハーバー規定(1504条(f))

ア) 背景

売却した製品の使用から生ずるGHG排出量算出のように、バリューチェーンにおけるサプライヤーや第三者から活動データを得るのが難しく、その情報の正確性の確認も難しいので、スコープ3排出量のデータを作成するには、見積もりと前提に大きく依存せざるを得ない(87 Fed. Reg. at 21390)。潜在的な責任負担の懸念を取り除き、スコープ3開示を促進するため(87 Fed. Reg. at 21391)

なお、気候関連の開示は、SECに提出(file)されるものであると解されるので、その虚偽記載等については、年次報告書であれば1934年法18条の適用があり、また参照方式による登録届出書には1933年法11条の適用があるとされる(87 Fed. Reg. at 21411)。

イ) 内容

合理的な根拠がなく当該記載がされもしくは確認され、または誠実さ(good faith)がなく開示されたことが証明されない限り、登録者によって作成されまたは登録者のために作成された記載は、1933年法および1934年法にいう詐欺的記載であるとはみなされない(1504条(f)(1)(3))。

このセーフハーバー規定は、1500条から1506条までの規定に従い開示され、SECに提出される書類においてなされた、スコープ3に関するいずれの記載にも適用される(1504条(f)(2))。

(6) 開示の認証(attestation)の制度(1505条)

ア) 認証の意義

GHG報告書には、様々な算定方法、前提、多くの見積もりが含まれ、第三者からの提供データへの信頼も含まれるので、数値だけでなく、算定方法、重要な前提、情報源などについての投資家の信頼を高めるため、第三者の認証を要求(87 Fed. Reg. at 21393)

イ) 対象(1505条(a)(1))

認証の提出義務者：早期提出会社および大規模早期提出会社

認証の対象：1504条によるスコープ1およびスコープ2の排出量開示について(年次)

→ すべての登録者ではない。多くの大規模早期提出会社はGHG排出量の開示についてすでに自主的に何らかの形で保証を取得しており、新たなコスト負担は大きくない。またスコープ1およびスコープ2の排出は、直接的または間接的に自社の施設または支配する活動によるものであるから、情報を入手しやすいし、すでに自主的に保証を取得している。他方、スコープ3は、特に供給者、顧客、バリューチェーンの第三者から活動データを入手しなければならないといった大きな困難があり、コストも高いことから、対象外とされた(87 Fed. Reg. at 21395-21396)。

<移行期間>

施行後の認証2回分は限定的な保証の程度(10-Qの連結財務諸表監査の程度)、それ以降は合理的な保証の程度(10-Kの程度)を要する。

※ 提出義務を負わない者(登録会社)であっても、認証提供者、用いられる認証基準、認

証の水準・範囲などを開示すれば、任意の認証提出が可能（1505条(e)）

- ※ GHG 程度の指標やスコープ 3 の排出量について、1505 条(b)~(d)の規定に従い、かつ、スコープ 1 およびスコープ 2 と同じ認証基準を用いるのであれば、任意に認証（たとえば限定的保証）を受けることは可能（1505 条(a)(2)）

ウ) 認証提供者

認証提供者…認証報告書の作成と署名（1505 条(b)）

(i) 認証提供者とは

GHG 排出量の測定、分析、報告および認証に有意義な経験（十分な適性と能力）を有している点で GHG 排出量の専門家であること（1505 条(b)(1)）

(ii) 独立性の要件を満たすこと

認証提供者の認証取得者およびその関係者からの独立性の要請（財務諸表監査の監査人の独立性 Reg. S-X Rule 2-01 をモデルにした規制）：認証の客観性を担保して開示の信頼性を確保（87 Fed. Reg. at 21399）（1505 条(b)(2)）

エ) 認証報告書の内容

・ 認証報告書の作成に用いられる基準は、誰でも無料で利用でき、適正な手続きに従っている主体により設定されたものでなければならない（1505 条(a)(2)）。PCAOB、AICPA、IAASB が定める認証基準はこれに該当するという SEC の見解（87 Fed. Reg. at 21401）。

・ 認証報告書の様式・内容は、認証提供者が用いる認証基準に定める要件に従うものとするが、一定事項（報告の対象事項、測定・評価の時点、測定・評価の基準、保証の水準、認証基準、結論・意見など）を含まなければならない（1505 条(c)(1)~(13)）。

→ 認証報告書の標準化は比較容易性のため（87 Fed. Reg. at 21401）

7. 気候関連・GHG 排出量に関する目標の開示

(1) GHG 排出量の削減目標または気候関連リスクの目標を設定した場合、開示義務。ただし、1502 条または 1503 条の規定による開示に目標を含んでいる場合、ここで別途の開示は不要（1506 条(a)）

(2) 開示には以下の事項を含む。目標に含まれる活動・排出量の範囲、測定単位、目標達成のための期間、各目標の基準となる年、気候関連目標の達成方法など（1506 条(b)）。目標達成に向けて進展しているか否かを示す関連データと進展がどのように遂げられたかの開示。毎年更新し、その年度にとった目標達成のための行動を説明（1506 条(c)）。目標達成のためにカーボンオフセットや再生可能エネルギー証書が用いられている場合、それによる炭素の減少量または生み出した再生可能エネルギーの量の開示（1506 条(d)）

(3) SEC によれば、目標・目的は将来に関するものであり、達成するための方法や予想される進捗状況は将来の予測情報に該当すると考えられ、そのような記載には連邦証券諸法のセーフハーバー規定の適用の可能性があるとする（87 Fed. Reg. at 21407）。

8. 提案規則（規則案）に関する学説の状況

前述の通り、大規模上場会社の多くはすでに ESG に関する自主的開示を行っており、最近も株主提案（1934 年法規則 14a-8 の規定に基づき）の方法を用いて、会社に ESG あるいはサステナビリティに関する報告書の作成・公表を求める例がみられる（Rose 前掲 1854 頁、Hazen 前掲 764 頁）。自主的開示には様々な問題点が指摘されているが、現行の Reg. S-K の ESG 開示の状況を見ると、自主的開示の方がより広く詳しく情報を記載しているという（Fairfax 前掲 294 頁）。ESG 開示の義務化に異論を唱える会社の主な理由は、投資判断における情報の重要性がないこと、情報提供のコストおよび責任負担のリスクであるとされ、また投資家保護、公正な市場および資本形成という SEC の任務を超える領域の問題であるとの意見もあるという（Winden 前掲 1233 頁・1235 頁）。これに対し、自主的開示については、SEC も規則提案理由で述べているように、情報開示は不完全で標準化（開示項目、測定方法、フォーマット等）されていない、明確性・比較容易性・信頼を欠いているという認識が学説でも一般的な見方のようなのである（Cythia & Fisch 前掲 10-12 頁、Fisch 前掲 927 頁、Winden 前掲 1218 頁、Hazen 前掲 750 頁等）³¹。

規則案は、気候変動に関して何らかの事業上の変更、気候リスクを監視するための特定のガバナンス体制の採用、炭素排出量の目標設定、または移行計画の実施などを強制ないし要求するものではなく、標準化された開示の枠組みを示すものである³²。Fisch 教授らは、グリーンウォッシングの危険や情報隠し、不確実性から投資家を守る制度として、規則案に肯定的な評価を示す（Fisch & Georgiev 前掲 4 頁）。

規則案は、取締役会のガバナンスに焦点を当てて比較的詳しい情報開示を要求している点で特徴的である。たとえば、会社に気候変動に関する監視のメカニズム（責任を負う取締役会の構成員または委員会の特定、気候に関する取締役会の専門性、どのようにして気候関連リスクについて取締役会が情報を得た状態を作るか、取締役会が気候関連のリスクをどのように監視に取り込むのか、など）を年次に開示するよう義務づけており、具体的な開示の枠組みは会社に任せている³³。すなわち、リスク管理体制の状況を開示させる趣旨のものといえる。これはあくまでも開示の制度であって、上記 Fisch 教授らが述べるように何らかの組織体制の採用を会社に義務づけるものではないが、業界の標準レベルを下回っている場合には、正確な事実の開示義務を課すことは会社に「より良くなる(do better)」動機付けとなり得るとの見方もある³⁴。

³¹ John C. Coffee, Jr., *The Future of Disclosure: ESG, Common Ownership, and Systematic Risk*, 2021 Colum. Bus. L. Rev. 602, 641 (2021).

³² Jill E. Fisch & George S. Georgiev, *Re: Enhancement and Standardization of Climate-Related Disclosures for Investors (S7-10-22)* 3 (June 6, 2022). <https://ssrn.com/abstract=4129614> これは 30 名の法律学者の意見として SEC に提出された書簡である。

³³ Amelia Miazad, *D&O Insurance as ESG Monitors* (2022) at 23, SSRN: <https://ssrn.com/abstract=4222100>.

³⁴ Susan S. Kuo & Benjamin Means, *Climate Change Compliance*, 107 Iowa L. Rev. 2135, 2173 (2022). Ho 教授は、直接規制が困難な場合、情報開示は会社の行動に変化をもたらす動機付けとなるという規制の「soft form」として広く認識されているという。Virginia Harper Ho, *Non-Financial Reporting & Corporate Governance: Explaining American Divergence & Its Implications for Disclosure Reform*, 10 Acct., Econ., & L. (Issue 2) 1, 12

ESG 開示の義務化により、連邦証券諸法の虚偽記載等に係る民事責任規定(1933 年法 11 条、1934 年法規則 14a-9 等)の適用を受けることになる。開示義務化を支持する学説では、この点はメリットとして捉えられているが、会社にとっては責任回避のために大きなコストを負担することになるという懸念が示されていた (Rose 前掲 1847 頁)。この点について規則案は、スコープ 3 の開示に関して、その重要性と開示の困難性を考慮した結果として、セーフハーバー規定を設ける提案をしているところが注目される。ESG 開示のどの部分かは明らかでないが、Hazen 前掲 769 頁・787 頁・790-791 頁も、自主的・義務的開示を問わず、リスクを回避してより良い情報開示を促進する効果が認められるので、セーフハーバー規定を設けるべきであると主張していた。

信頼を担保するには、開示された情報の確証が必要となるが、自主的開示の場合はそれが困難であると指摘されていた (Winden 前掲 1223 頁)。客観的立場にある第三者にその内容の正確性をチェックさせる認証の仕組みを規則案は盛り込んでいる。ただし、その義務の対象事項が GHG 排出量のスコープ 1 とスコープ 2 に限られているところ、ESG 開示に保証ないし認証を要求することには賛成しつつ、より広く開示データについての認証を取得させることを提唱する見解もみられる (Esty & Todd 前掲 464 頁)。

規則案は、気候変動関連情報を Reg. S-K 改正案に基づき 1 箇所でまとめて開示する方法を採用している。その中で議論やリスク要素を開示させることとしている。年次報告書の中で ESG 開示を 1 箇所にまとめて記載する方法は、Fisch 教授が提唱した SD&A (Sustainability Discussion & Analysis) と方向性を同じくする (Fisch 前掲 929 頁)。SEC への提出書類となるので、SEC の書類審査対象となる点で、自主的開示より信頼性が増すと考えられる (Fisch 前掲 958 頁)。もっとも Fisch 教授の提案は、プリンシプル・ベースを基礎に開示すべき事項の判断を取締役会に行わせ、SEC がガイドラインを発して会社および業界に特有の重要なサステナビリティ問題を特定すべきとするものである (Fisch 前掲 951 頁・957-958 頁)。

IV. 取締役会構成員の多様性

1. 概説

(1) 取締役会構成員の多様性に対する世界的な投資家の関心の高まりに対応して³⁵、2009 年、SEC は、Reg. S-K を改正し、指名委員会（または取締役会）が取締役候補者の特定に際して多様性を考慮するか否か、考慮する場合はどのように考慮するのかについて開示することを義務づけた。また指名委員会（または取締役会）が多様性の考慮に関する方針を有するときは、当該方針がどのように実施されるかに加え、当該方針の有効性をどのように評価するかについて説明することを義務づけた (Reg. S-K Item 407(c)(2)(vi))。

この改正で SEC は多様性の意義を定めなかった (広く、観点、専門的経験、教育、能力等の違いを含めても構わないし、人種、ジェンダー、国籍に焦点を当ててもよい、との見解を示すにと

(2020).

³⁵ SEC, Rel. No. 33-9089, Proxy Disclosure Enhancements (Dec. 16, 2009), 74 Fed. Reg. 68334 (Dec. 23, 2009)

どまった) (SEC, 74 Fed. Reg. at 68344)。多様性の考慮に関する方針を採択することも強制されなかった。結果は、委任状説明書の中で、取締役会構成員の多様性に関する何らかの開示を行う会社が大幅に増加した³⁶。

(2) カリフォルニア州会社法においては、同州に本店を置く上場会社に対し、2019 年末までに取締役会に 1 名以上の女性の取締役を置くこと、2021 年末までに、取締役の員数が、①6 名以上の会社では少なくとも 3 名の女性の取締役を、②5 名の会社では少なくとも 2 名の女性の取締役を、③4 名以下の会社では少なくとも 1 名の取締役を置かなければならないこととされた (Cal. Corp. Code § 301.3(a)(b))³⁷。違反には罰金が科せられる (同 § 301.3(e)(1))。

また同州に本店を置く上場会社に対し、2021 年末までに取締役会に 1 名以上の過小評価コミュニティからの取締役を置くこと、2022 年末までに、取締役の員数が、①9 名以上の会社では少なくとも 3 名の過小評価コミュニティからの取締役を、②5 名以上 8 名以下の会社では少なくとも 2 名の過小評価コミュニティからの取締役を、③4 名以下の会社では少なくとも 1 名の過小評価コミュニティからの取締役を置かなければならないこととされた (Cal. Corp. Code § 301.4(a)(b))。違反には罰金が科せられる (同 § 301.4(d)(1))。「過小評価コミュニティからの者」とは、Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or gay, lesbian, bisexual, or transgender であると自認する個人のことである (同 § 301.4(e)(1))。

(3) Nasdaq は、同市場上場会社に対し、取締役会構成員の多様性を要請するための上場規則改正を提案し、2021 年 8 月、SEC がこれを承認した (1934 年法 19 条 b 項)³⁸。開示ベースの規制枠組みを採用。①取締役会構成員のうち一定数以上をダイバーズとするか、しない場合は説明をすること、②取締役会構成員のダイバーズの状況を毎年開示すること、が求められる。カリフォルニアの割当制(quota)の取組みが影響を与えたとみる論者がいる³⁹。

規則改正にあたり、Nasdaq は、多くの実証研究を調査し、多様性のある取締役会がコーポレートガバナンスおよび財務成果の改善に明らかに関係があると判断。さらに、多くの投資家が取締役会の多様化を期待しており、その一方で取締役会構成員の多様性に関する情報へのアクセスが投資家に困難な状況にあること、また会社に影響を与える重要問題に関する経営者の考えは投資家に明確な方法で伝えられるべきであり統一の開示義務が求められる、といった理由が挙げられた⁴⁰。

³⁶ Thomas Lee Hazen & Lissa Lamkin Broom, Board Diversity and Proxy Disclosure, 37 U. Dayton L. Rev. 39, 57 (2011).

³⁷ Cal. S.B. 826 (Sept. 30, 2018); Cal. A.B. 979 (Sept. 30, 2020).

³⁸ SEC, Rel. No. 34-92590, Order Approving Proposed Rule Changes, as Modified by Amendments No. 1, To Adopt Listing Rules Related to Board Diversity and To Offer Certain Listed Companies Access to a Complimentary Board Recruiting Service (Aug. 6, 2021), 86 Fed. Reg. 44424 (Aug. 12, 2021).

³⁹ Christopher M. Bruner, Corporate Governance Reform and Sustainability Imperative, 131 Yale L. J. 1217, 1261 (2022).

⁴⁰ The Nasdaq Stock Mkt. LLC., Self-Regulatory Organization Filing of Proposed Rule Changes (Form 19b-4)

ただし、ジェンダーの多様化が会社のパフォーマンスに影響するかについて実証研究の結果は一致していないと指摘する見解があり (Bruner 前掲 1260 頁)、また Nasdaq が参照した実証研究には前提等に問題があるものが含まれるとともに、取締役会の多様性が財務成果に消極的な影響を与え得るとする実証研究を無視しているとの指摘もなされている⁴¹。SEC も、取締役会構成員の多様化の影響に関する Nasdaq が調査した研究やコメント提出者の結論は一致しておらず、一般的にみて結論が出ていないとの見解を述べている (SEC, 86 Fed. Reg. at 44432)。

※ なお、1934 年法 6 条 b 項(5)は、上場規則が上場会社の財務成果を向上させることの証明を取引所に要求していない。Nasdaq の規則改正案は、投資家に広く利用可能な方法で一貫性のある比較容易な形で投資家にとって重要な情報を提供するものであり、会社の評価に役立つ情報を投資家に提供するものであるから、上場規則が 6 条 b 項 (5) の要件を満たすと判断に用いられてきたフレーズ、「公正かつ秩序のある市場の維持に貢献する」ものである、と SEC は述べた (SEC, 86 Fed. Reg. at 44425)。

2. Nasdaq の 2021 年規則改正の内容

(1) 原則

ダイバース…女性、過小評価少数者(Underrepresented Minority)、LGBTQ+の 1 つ以上に該当すると自ら認識する者を意味する (Rule 5605(f)(1))。

上場会社は、原則として、取締役会構成員のうち少なくとも 2 名のダイバースを置かなければならず、置かない場合はその理由を説明しなければならない。ダイバース 2 名のうち、少なくとも 1 名を女性の取締役とすること、および、少なくとも 1 名を過小評価少数者または LGBTQ+ としなければならない (Rule 5605(f)(2)(A))。

置かない場合の説明は、委任状説明書や年次報告書等または会社のウェブサイトにて開示 (Rule 5605(f)(3))。属する市場区分や取締役会が小規模な会社、外国の会社等によって、異なる導入時期が定められている (Rule 5605(f)(5))。

→ “Diverse, or Explain.”のアプローチ。とはいえ、一定基準に満たない者の名前を公表する、いわゆる名指し非難 (name and shame) の効果があるのではないかという批判 (Fried 前掲 7 頁)。SEC の立場は、取締役会構成員の多様性を高めるよう Nasdaq 上場会社に促す効果はあるかもしれない。多様性を強制するものではない (SEC, 86 Fed. Reg. at 44428)。説明の詳しきは会社が判断することであり、取引所は会社による説明の実質を評価 (evaluate) しない (SEC, 86 Fed. Reg. at 44428)。コメントレーターでは、ダイバースの定義が狭すぎるのではないか (身体に障害をもつ者や兵役経験者、年齢などが定義に含まれていない) との指摘があったが、そのような広い多様性概念を用いることは排除されず、会社は explain の中でその旨を説明すればよいというのが Nasdaq の考え⁴²。

[SR-NASDAQ-2020-081] (Dec. 1, 2020) at 9-11.

⁴¹ Jesse M. Fried, Will Nasdaq's Diversity Rules Harm Investors, 12 Harv. Bus. L. Rev. ONLINE art. 1 (2021) 3-6.

⁴² Nasdaq Response Letter II at 10-11, <https://www.sec.gov/comments/sr-nasdaq-2020-081/srnasdaq2020081->

(2) 例外

(a) 外国の会社

取締役会構成員のうち少なくとも2名のダイバー스를置かなければならず、置かない場合はその理由を説明しなければならない。2名のうち、少なくとも1名を女性とし、かつ、もう1名については、女性、LGBTQ+または当該会社の本店が置かれている国における国籍、人種、民族、先住民、文化、宗教、言語のアイデンティティーの1つ以上に基づいて過小評価されている個人を含むことができる (Rule 5605(f)(2)(B))。

(b) 小規模な報告会社

小規模な報告会社 (1934年法規則 12b-2) は、取締役会構成員のうち少なくとも2名のダイバー스를置かなければならず、置かない場合はその理由を説明しなければならない。2名のうち1名は女性であること、もう1名については女性、LGBTQ+または過小評価少数者の1つ以上に該当する個人とすることができる (Rule 5605(f)(2)(C))。

(c) 小規模な取締役会をもつ会社

取締役会構成員の数が5名以下の会社では、少なくとも1名のダイバー스를置かなければならず、置かない場合はその理由を説明しなければならない。

(3) 取締役会構成員の多様性についての開示方法

上場規則で示された「取締役会の多様性マトリックス」なる表 (資料3の6頁以下) に類似する様式を用いて、年次に開示することを要求される (Rule 5606(a))。開示媒体は、委任状説明書や年次報告書等のほか、会社のウェブサイト (Rule 5606(b))。取締役は、ダイバースであると自認しない選択が認められ、多様性マトリックスの開示目的のため、ダイバースであると自認することが要求されるものではないとのSECの見解が述べられている (SEC, 86 Fed. Reg. at 44435, 44437)。

【以上】

VIII. STATUTORY AUTHORITY

The amendments contained in this release are being proposed under the authority set forth in Sections 7, 10, 19(a), and 28 of the Securities Act, as amended, and Sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act, as amended.

List of Subjects in 17 CFR Parts 210, 229, 232, 239, and 249

Accountants; Accounting; Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 210 – FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, and sec. 102(c), Pub. L. 112-106, 126 Stat. 310 (2012), unless otherwise noted.

2. Amend § 210.8-01 by revising paragraph (b) to read as follows:

§ 210.8-01 General requirements for Article 8

* * * * *

(b) Smaller reporting companies electing to prepare their financial statements with the form and content required in Article 8 need not apply the other form and content requirements in 17 CFR part 210 (Regulation S-X) with the exception of the following:

(1) The report and qualifications of the independent accountant shall comply with the requirements of §§ 210.2-01 through 210.2-07 (Article 2); and

(2) The description of accounting policies shall comply with § 210.4-08(n);

(3) Smaller reporting companies engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in § 210.4-10 with respect to such activities; and

(4) Sections 210.14-01 and 210.14-02 (Article 14).

* * * * *

3. Add an undesignated center heading and §§ 210.14-01 and 210.14-02 to read as follows:

Article 14 – Climate-related disclosure

§ 210.14-01 Climate-related disclosure instructions.

(a) *General.* A registrant must include disclosure pursuant to § 210.14-02 in any filing that is required to include disclosure pursuant to subpart 229.1500 of this chapter and that also requires the registrant to include its audited financial statements. The disclosure pursuant to § 210.14-02 must be included in a note to the financial statements included in such filing.

(b) *Definitions.* The definitions in § 229.1500 (Item 1500 of Regulation S-K) apply to this Article 14 of Regulation S-X.

(c) *Basis of calculation.* When calculating the metrics in this Article 14, except where otherwise indicated, a registrant must:

(1) Use financial information that is consistent with the scope of the rest of its consolidated financial statements included in the filing; and

(2) Whenever applicable, apply the same accounting principles that it is required to apply in preparation of the rest of its consolidated financial statements included in the filing.

(d) *Historical periods.* Disclosure must be provided for the registrant’s most recently completed fiscal year, and for the historical fiscal year(s) included in the consolidated financial statements in the filing (*e.g.*, a registrant that is required to include balance sheets as of the end of its two most recent fiscal years and income statements and cash flow statements as of the end of its three most recent fiscal years would be required to disclose two years of the climate-related metrics that correspond to balance sheet line items and three years of the climate-related metrics that correspond to income statement or cash flow statement line items).

§ 210.14-02 Climate-related metrics.

(a) *Contextual information.* Provide contextual information, describing how each specified metric was derived, including a description of significant inputs and assumptions used, and, if applicable, policy decisions made by the registrant to calculate the specified metrics.

(b) *Disclosure thresholds.*

(1) Disclosure of the financial impact on a line item in the registrant’s consolidated financial statements pursuant to paragraphs (c) and (d) of this section (including any impacts included pursuant to paragraphs (i) and (j) of this section) is not required if the sum of the

absolute values of all the impacts on the line item is less than one percent of the total line item for the relevant fiscal year.

(2) Disclosure of the aggregate amount of expenditure expensed or the aggregate amount of capitalized costs incurred pursuant to paragraphs (e) and (f) of this section (including any impacts included pursuant to paragraphs (i) and (j) of this section) is not required if such amount is less than one percent of the total expenditure expensed or total capitalized costs incurred, respectively, for the relevant fiscal year.

(c) *Financial impacts of severe weather events and other natural conditions.* Disclose the impact of severe weather events and other natural conditions, such as flooding, drought, wildfires, extreme temperatures, and sea level rise on any relevant line items in the registrant’s consolidated financial statements during the fiscal years presented. Disclosure must be presented, at a minimum, on an aggregated line-by-line basis for all negative impacts and, separately, at a minimum, on an aggregated line-by-line basis for all positive impacts. Impacts may include, for example:

(1) Changes to revenues or costs from disruptions to business operations or supply chains;

(2) Impairment charges and changes to the carrying amount of assets (such as inventory, intangibles, and property, plant and equipment) due to the assets being exposed to severe weather, flooding, drought, wildfires, extreme temperatures, and sea level rise;

(3) Changes to loss contingencies or reserves (such as environmental reserves or loan loss allowances) due to impact from severe weather events; and

(4) Changes to total expected insured losses due to flooding or wildfire patterns.

(d) *Financial impacts related to transition activities.* Disclose the impact of any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks on any relevant line items in the registrant’s consolidated financial statements during the fiscal years presented. Disclosure must be presented, at a minimum, on an aggregated line-by-line basis for all negative impacts and, separately, at a minimum, on an aggregated line-by-line basis for all positive impacts. Impacts may include, for example:

(1) Changes to revenue or cost due to new emissions pricing or regulations resulting in the loss of a sales contract;

(2) Changes to operating, investing, or financing cash flow from changes in upstream costs, such as transportation of raw materials;

(3) Changes to the carrying amount of assets (such as intangibles and property, plant, and equipment) due to, among other things, a reduction of the asset’s useful life or a change in the asset’s salvage value by being exposed to transition activities; and

(4) Changes to interest expense driven by financing instruments such as climate-linked bonds issued where the interest rate increases if certain climate-related targets are not met.

(e) *Expenditure to mitigate risks of severe weather events and other natural conditions.* Disclose separately the aggregate amount of expenditure expensed and the aggregate amount of capitalized costs incurred during the fiscal years presented to mitigate the risks from severe weather events and other natural conditions, such as flooding, drought, wildfires, extreme temperatures, and sea level rise. For example, a registrant may be required to disclose the amount of expense or capitalized costs, as applicable, to increase the resilience of assets or operations, retire or shorten the estimated useful lives of impacted assets, relocate assets or

operations at risk, or otherwise reduce the future impact of severe weather events and other natural conditions on business operations.

(f) *Expenditure related to transition activities.* Disclose separately the aggregate amount of expenditure expensed and the aggregate amount of capitalized costs incurred during the fiscal years presented to reduce GHG emissions or otherwise mitigate exposure to transition risks. For example, a registrant may be required to disclose the amount of expense or capitalized costs, as applicable, related to research and development of new technologies, purchase of assets, infrastructure, or products that are intended to reduce GHG emissions, increase energy efficiency, offset emissions (purchase of energy credits), or improve other resource efficiency. A registrant that has disclosed GHG emissions reduction targets or other climate-related commitments must disclose the expenditures and costs related to meeting its targets, commitments, and goals, if any, in the fiscal years presented.

(g) *Financial estimates and assumptions impacted by severe weather events and other natural conditions.* Disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions, such as flooding, drought, wildfires, extreme temperatures, and sea level rise. If yes, provide a qualitative description of how the development of such estimates and assumptions were impacted by such events.

(h) *Financial estimates and assumptions impacted by transition activities.* Disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were impacted by risks and uncertainties associated with, or known impacts from, a potential transition to a lower carbon economy or any climate-related targets disclosed by the

registrant. If yes, provide a qualitative description of how the development of such estimates and assumptions were impacted by such a potential transition or the registrant’s disclosed climate-related targets.

(i) *Impact of identified climate-related risks.* A registrant must also include the impact of any climate-related risks (separately by physical risks and transition risks, as defined in § 229.1500(c) of this chapter), identified by the registrant pursuant to § 229.1502(a) of this chapter, on any of the financial statement metrics disclosed pursuant to paragraphs (c) through (h) of this section.

(j) *Impact of climate-related opportunities.* A registrant may also include the impact of any opportunities arising from severe weather events and other natural conditions, any impact of efforts to pursue climate-related opportunities associated with transition activities, and the impact of any other climate-related opportunities, including those identified by the registrant pursuant to § 229.1502(a) of this chapter, on any of the financial statement metrics disclosed pursuant to paragraphs (c) through (h) of this section. If a registrant makes a policy decision to disclose the impact of an opportunity, it must do so consistently for the fiscal years presented, including for each financial statement line item and all relevant opportunities identified by the registrant.

**PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER
SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY
POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K**

4. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78 mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a37, 80a-

38(a), 80a-39, 80b-11 and 7201 et seq.; 18 U.S.C. 1350; sec. 953(b), Pub. L. 111-203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112-106, 126 Stat. 310 (2012).

5. Add subpart 229.1500 (“Climate-Related Disclosure”) to read as follows:

Subpart 229.1500—Climate-Related Disclosure

Sec.

- 229.1500 (Item 1500) Definitions.
- 229.1501 (Item 1501) Governance.
- 229.1502 (Item 1502) Strategy, business model, and outlook.
- 229.1503 (Item 1503) Risk management.
- 229.1504 (Item 1504) GHG emissions metrics.
- 229.1505 (Item 1505) Attestation of Scope 1 and Scope 2 emissions disclosure.
- 229.1506 (Item 1506) Targets and goals.
- 229.1507 (Item 1507) Interactive data requirement.

Subpart 229.1500—Climate-Related Disclosure

§ 229.1500 (Item 1500) Definitions.

As used in this subpart, these terms have the following meanings:

(a) *Carbon offsets* represents an emissions reduction or removal of greenhouse gases (“GHG”) in a manner calculated and traced for the purpose of offsetting an entity’s GHG emissions.

(b) *Climate-related opportunities* means the actual or potential positive impacts of climate-related conditions and events on a registrant’s consolidated financial statements, business operations, or value chains, as a whole.

(c) *Climate-related risks* means the actual or potential negative impacts of climate-related conditions and events on a registrant’s consolidated financial statements, business operations, or value chains, as a whole. Climate-related risks include the following:

(1) *Physical risks* include both acute risks and chronic risks to the registrant’s business operations or the operations of those with whom it does business.

(2) *Acute risks* are event-driven and may relate to shorter term extreme weather events, such as hurricanes, floods, and tornadoes, among other events.

(3) *Chronic risks* relate to longer term weather patterns and related effects, such as sustained higher temperatures, sea level rise, drought, and increased wildfires, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water.

(4) *Transition risks* are 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 a registrant’s customers or business counterparties) that might trigger changes to market behavior, consumer preferences or behavior, and registrant behavior.

(d) *Carbon dioxide equivalent* (“CO₂e”) means the common unit of measurement to indicate the global warming potential (“GWP”) of each greenhouse gas, expressed in terms of the GWP of one unit of carbon dioxide (“CO₂”).

(e) *Emission factor* means a multiplication factor allowing actual GHG emissions to be calculated from available activity data or, if no activity data is available, economic data, to derive absolute GHG emissions. Examples of activity data include kilowatt-hours of electricity used, quantity of fuel used, output of a process, hours of operation of equipment, distance travelled, and floor area of a building.

(f) *Global warming potential* (“GWP”) means a factor describing the global warming impacts of different greenhouse gases. It is a measure of how much energy will be absorbed in the atmosphere over a specified period of time as a result of the emission of one ton of a greenhouse gas, relative to the emissions of one ton of carbon dioxide (CO₂).

(g) *Greenhouse gases* (“GHG”) means carbon dioxide (CO₂), methane (“CH₄”), nitrous oxide (“N₂O”), nitrogen trifluoride (“NF₃”), hydrofluorocarbons (“HFCs”), perfluorocarbons (“PFCs”), and sulfur hexafluoride (“SF₆”).

(h) *GHG emissions* means direct and indirect emissions of greenhouse gases expressed in metric tons of carbon dioxide equivalent (CO₂e), of which:

(1) Direct emissions are GHG emissions from sources that are owned or controlled by a registrant.

(2) Indirect emissions are GHG emissions that result from the activities of the registrant, but occur at sources not owned or controlled by the registrant.

(i) *GHG intensity* (or *carbon intensity*) means a ratio that expresses the impact of GHG emissions per unit of economic value (*e.g.*, metric tons of CO₂e per unit of total revenues, using the registrant’s reporting currency) or per unit of production (*e.g.*, metric tons of CO₂e per product produced).

(j) *Internal carbon price* means an estimated cost of carbon emissions used internally within an organization.

(k) *Location* means a ZIP code or, in a jurisdiction that does not use ZIP codes, a similar subnational postal zone or geographic location.

(l) *Operational boundaries* means the boundaries that determine the direct and indirect emissions associated with the business operations owned or controlled by a registrant.

(m) *Organizational boundaries* means the boundaries that determine the operations owned or controlled by a registrant for the purpose of calculating its GHG emissions.

(n) *Renewable energy credit or certificate* (“REC”) means a credit or certificate representing each megawatt-hour (1 MWh or 1,000 kilowatt-hours) of renewable electricity generated and delivered to a power grid.

(o) *Scenario analysis* means a process for identifying and assessing a potential range of outcomes of various possible future climate scenarios, and how climate-related risks may impact a registrant’s operations, business strategy, and consolidated financial statements over time. For example, registrants might use scenario analysis to test the resilience of their strategies under certain future climate scenarios, such as those that assume global temperature increases of 3 °C, 2 °C, and 1.5 °C above pre-industrial levels.

(p) *Scope 1 emissions* are direct GHG emissions from operations that are owned or controlled by a registrant.

(q) *Scope 2 emissions* are indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant.

(r) *Scope 3 emissions* are 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.

(1) Upstream activities in which Scope 3 emissions might occur include:

(i) A registrant’s purchased goods and services;

(ii) A registrant’s capital goods;

(iii) A registrant's fuel and energy related activities not included in Scope 1 or Scope 2 emissions;

(iv) Transportation and distribution of purchased goods, raw materials, and other inputs;

(v) Waste generated in a registrant's operations;

(vi) Business travel by a registrant's employees;

(vii) Employee commuting by a registrant's employees; and

(viii) A registrant's leased assets related principally to purchased or acquired goods or services.

(2) Downstream activities in which Scope 3 emissions might occur include:

(i) Transportation and distribution of a registrant's sold products, goods or other outputs;

(ii) Processing by a third party of a registrant's sold products;

(iii) Use by a third party of a registrant's sold products;

(iv) End-of-life treatment by a third party of a registrant's sold products;

(v) A registrant's leased assets related principally to the sale or disposition of goods or services;

(vi) A registrant's franchises; and

(vii) Investments by a registrant.

(s) *Transition plan* means a registrant's strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations.

(t) *Value chain* means the upstream and downstream activities related to a registrant's operations. Upstream activities in connection with a value chain may include activities by a party other than the registrant that relate to the initial stages of a registrant's production of a good

or service (*e.g.*, materials sourcing, materials processing, and supplier activities). Downstream activities in connection with a value chain may include activities by a party other than the registrant that relate to processing materials into a finished product and delivering it or providing a service to the end user (*e.g.*, transportation and distribution, processing of sold products, use of sold products, end of life treatment of sold products, and investments).

§ 229.1501 (Item 1501) Governance.

(a)(1) Describe the board of director’s oversight of climate-related risks. Include the following, as applicable:

(i) The identity of any board members or board committee responsible for the oversight of climate-related risks;

(ii) Whether any member of the board of directors has expertise in climate-related risks, with disclosure in such detail as necessary to fully describe the nature of the expertise;

(iii) The processes by which the board of directors or board committee discusses climate-related risks, including how the board is informed about climate-related risks, and the frequency of such discussion;

(iv) Whether and how the board of directors or board committee considers climate-related risks as part of its business strategy, risk management, and financial oversight; and

(v) Whether and how the board of directors sets climate-related targets or goals, and how it oversees progress against those targets or goals, including the establishment of any interim targets or goals.

(2) If applicable, a registrant may also describe the board of director’s oversight of climate-related opportunities.

(b)(1) Describe management's role in assessing and managing climate-related risks.

Include the following, as applicable:

(i) Whether certain management positions or committees are responsible for assessing and managing climate-related risks and, if so, the identity of such positions or committees and the relevant expertise of the position holders or members in such detail as necessary to fully describe the nature of the expertise;

(ii) The processes by which such positions or committees are informed about and monitor climate-related risks; and

(iii) Whether and how frequently such positions or committees report to the board or a committee of the board on climate-related risks.

(2) If applicable, a registrant may also describe management's role in assessing and managing climate-related opportunities.

§ 229.1502 (Item 1502) Strategy, business model, and outlook.

(a) Describe any climate-related risks reasonably likely to have a material impact on the registrant, including on its business or consolidated financial statements, which may manifest over the short, medium, and long term. If applicable, a registrant may also disclose the actual and potential impacts of any climate-related opportunities when responding to any of the provisions in this section.

(1) Discuss such climate-related risks, specifying whether they are physical or transition risks and the nature of the risks presented.

(i) For physical risks, describe the nature of the risk, including if it may be categorized as an acute or chronic risk, and the location and nature of the properties, processes, or operations subject to the physical risk.

(A) If a risk concerns the flooding of buildings, plants, or properties located in flood hazard areas, disclose the percentage of those assets (square meters or acres) that are located in flood hazard areas in addition to their location.

(B) If a risk concerns the location of assets in regions of high or extremely high water stress, disclose the amount of assets (*e.g.*, book value and as a percentage of total assets) located in those regions in addition to their location. Also disclose the percentage of the registrant’s total water usage from water withdrawn in those regions.

(ii) For transition risks, describe the nature of the risk, including whether it relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), liability, reputational, or other transition-related factors, and how those factors impact the registrant. A registrant that has significant operations in a jurisdiction that has made a GHG emissions reduction commitment may be exposed to transition risks related to the implementation of the commitment.

(2) Describe how the registrant defines short-, medium-, and long-term time horizons, including how it takes into account or reassesses the expected useful life of the registrant’s assets and the time horizons for the registrant’s climate-related planning processes and goals.

(b) Describe the actual and potential impacts of any climate-related risks identified in response to paragraph (a) of this section on the registrant’s strategy, business model, and outlook.

(1) Include impacts on the registrant’s:

(i) Business operations, including the types and locations of its operations;

(ii) Products or services;

(iii) Suppliers and other parties in its value chain;

(iv) Activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes;

(v) Expenditure for research and development; and

(vi) Any other significant changes or impacts.

(2) Include the time horizon for each described impact (*i.e.*, in the short, medium, or long term, as defined in response to paragraph (a) of this section).

(c) Discuss whether and how any impacts described in response to paragraph (b) of this section are considered as part of the registrant's business strategy, financial planning, and capital allocation. Provide both current and forward-looking disclosures that facilitate an understanding of whether the implications of the identified climate-related risks have been integrated into the registrant's business model or strategy, including how any resources are being used to mitigate climate-related risks. Include in this discussion how any of the metrics referenced in § 210.14-02 of this chapter and § 229.1504 or any of the targets referenced in § 229.1506 relate to the registrant's business model or business strategy. If applicable, include in this discussion the role that carbon offsets or RECs play in the registrant's climate-related business strategy.

(d) Provide a narrative discussion of whether and how any climate-related risks described in response to paragraph (a) of this section have affected or are reasonably likely to affect the registrant's consolidated financial statements. The discussion should include any of the climate-related metrics referenced in § 210.14-02 of this chapter that demonstrate that the identified climate-related risks have had a material impact on reported financial condition or operations.

(e)(1) If a registrant maintains an internal carbon price, disclose:

(i) The price in units of the registrant's reporting currency per metric ton of CO₂e;

(ii) The total price, including how the total price is estimated to change over time, if applicable;

(iii) The boundaries for measurement of overall CO₂e on which the total price is based if different from the GHG emission organizational boundary required pursuant to § 229.1504(e)(2); and

(iv) The rationale for selecting the internal carbon price applied.

(2) Describe how the registrant uses any internal carbon price described in response to paragraph (e)(1) of this section to evaluate and manage climate-related risks.

(3) If a registrant uses more than one internal carbon price, it must provide the disclosures required by this section for each internal carbon price, and disclose its reasons for using different prices.

(f) Describe the resilience of the registrant's business strategy in light of potential future changes in climate-related risks. Describe any analytical tools, such as scenario analysis, that the registrant uses to assess the impact of climate-related risks on its business and consolidated financial statements, and to support the resilience of its strategy and business model. If the registrant uses scenario analysis to assess the resilience of its business strategy to climate-related risks, disclose the scenarios considered (*e.g.*, an increase of no greater than 3 °C, 2 °C, or 1.5 °C above pre-industrial levels), including parameters, assumptions, and analytical choices, and the projected principal financial impacts on the registrant's business strategy under each scenario. The disclosure should include both qualitative and quantitative information.

§ 229.1503 (Item 1503) Risk management.

(a) Describe any processes the registrant has for identifying, assessing, and managing climate-related risks. If applicable, a registrant may also describe any processes for identifying,

assessing, and managing climate-related opportunities when responding to any of the provisions in this section.

(1) When describing any processes for identifying and assessing climate-related risks, disclose, as applicable, how the registrant:

- (i) Determines the relative significance of climate-related risks compared to other risks;
- (ii) Considers existing or likely regulatory requirements or policies, such as GHG emissions limits, when identifying climate-related risks;
- (iii) Considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks; and
- (iv) Determines the materiality of climate-related risks, including how it assesses the potential scope and impact of an identified climate-related risk, such as the risks identified in response to § 229.1502.

(2) When describing any processes for managing climate-related risks, disclose, as applicable, how the registrant:

- (i) Decides whether to mitigate, accept, or adapt to a particular risk;
 - (ii) Prioritizes whether to address climate-related risks; and
 - (iii) Determines how to mitigate any high priority risks.
- (b) Disclose whether and how any processes described in response to paragraph (a) of this section are integrated into the registrant’s overall risk management system or processes. If a separate board or management committee is responsible for assessing and managing climate-related risks, a registrant should disclose how that committee interacts with the registrant’s board or management committee governing risks.

(c)(1) If the registrant has adopted a transition plan as part of its climate-related risk management strategy, describe the plan, including the relevant metrics and targets used to identify and manage any physical and transition risks. To allow for an understanding of the registrant's progress to meet the plan's targets or goals over time, a registrant must update its disclosure about the transition plan each fiscal year by describing the actions taken during the year to achieve the plan's targets or goals.

(2) If the registrant has adopted a transition plan, discuss, as applicable:

(i) How the registrant plans to mitigate or adapt to any identified physical risks, including but not limited to those concerning energy, land, or water use and management;

(ii) How the registrant plans to mitigate or adapt to any identified transition risks, including the following:

(A) Laws, regulations, or policies that:

(1) Restrict GHG emissions or products with high GHG footprints, including emissions caps; or

(2) Require the protection of high conservation value land or natural assets;

(B) Imposition of a carbon price; and

(C) Changing demands or preferences of consumers, investors, employees, and business counterparties.

(3) If applicable, a registrant that has adopted a transition plan as part of its climate-related risk management strategy may also describe how it plans to achieve any identified climate-related opportunities, such as:

(i) The production of products that may facilitate the transition to a lower carbon economy, such as low emission modes of transportation and supporting infrastructure;

- (ii) The generation or use of renewable power;
 - (iii) The production or use of low waste, recycled, or other consumer products that require less carbon intensive production methods;
 - (iv) The setting of conservation goals and targets that would help reduce GHG emissions;
- and
- (v) The provision of services related to any transition to a lower carbon economy.

§ 229.1504 (Item 1504) GHG emissions metrics.

(a) *General.* Disclose a registrant's GHG emissions, as defined in § 229.1500(h), for its most recently completed fiscal year, and for the historical fiscal years included in its consolidated financial statements in the filing, to the extent such historical GHG emissions data is reasonably available.

(1) For each required disclosure of a registrant's Scopes 1, 2, and 3 emissions, disclose the emissions both disaggregated by each constituent greenhouse gas, as specified in § 229.1500(g), and in the aggregate, expressed in terms of CO₂e.

(2) When disclosing a registrant's Scopes 1, 2, and 3 emissions, exclude the impact of any purchased or generated offsets.

(b) *Scopes 1 and 2 emissions.*

(1) Disclose the registrant's total Scope 1 emissions and total Scope 2 emissions separately after calculating them from all sources that are included in the registrant's organizational and operational boundaries.

(2) When calculating emissions pursuant to paragraph (b)(1) of this section, a registrant may exclude emissions from investments that are not consolidated, are not proportionately

consolidated, or that do not qualify for the equity method of accounting in the registrant's consolidated financial statements.

(c) *Scope 3 emissions.*

(1) Disclose the registrant's total Scope 3 emissions if material. A registrant must also disclose its Scope 3 emissions if it has set a GHG emissions reduction target or goal that includes its Scope 3 emissions. Disclosure of a registrant's Scope 3 emissions must be separate from disclosure of its Scopes 1 and 2 emissions. If required to disclose Scope 3 emissions, identify the categories of upstream or downstream activities that have been included in the calculation of the Scope 3 emissions. If any category of Scope 3 emissions is significant to the registrant, identify all such categories and provide Scope 3 emissions data separately for them, together with the registrant's total Scope 3 emissions.

(2) If required to disclose Scope 3 emissions, describe the data sources used to calculate the registrant's Scope 3 emissions, including the use of any of the following:

(i) Emissions reported by parties in the registrant's value chain, and whether such reports were verified by the registrant or a third party, or unverified;

(ii) Data concerning specific activities, as reported by parties in the registrant's value chain; and

(iii) Data derived from economic studies, published databases, government statistics, industry associations, or other third-party sources outside of a registrant's value chain, including industry averages of emissions, activities, or economic data.

(3) A smaller reporting company, as defined by §§ 229.10(f)(1), 230.405, and 240.12b-2 of this chapter, is exempt from, and need not comply with, the disclosure requirements of this paragraph (c).

(d) *GHG intensity.*

(1) Using the sum of Scope 1 and 2 emissions, disclose GHG intensity in terms of metric tons of CO₂e per unit of total revenue (using the registrant's reporting currency) and per unit of production relevant to the registrant's industry for each fiscal year included in the consolidated financial statements. Disclose the basis for the unit of production used.

(2) If Scope 3 emissions are otherwise disclosed, separately disclose GHG intensity using Scope 3 emissions only.

(3) If a registrant has no revenue or unit of production for a fiscal year, it must disclose another financial measure of GHG intensity or another measure of GHG intensity per unit of economic output, as applicable, with an explanation of why the particular measure was used.

(4) A registrant may also disclose other measures of GHG intensity, in addition to metric tons of CO₂e per unit of total revenue (using the registrant's reporting currency) and per unit of production, if it includes an explanation of why a particular measure was used and why the registrant believes such measure provides useful information to investors.

(e) *Methodology and related instructions.*

(1) A registrant must describe the methodology, significant inputs, and significant assumptions used to calculate its GHG emissions. The description of the registrant's methodology must include the registrant's organizational boundaries, operational boundaries (including any approach to categorization of emissions and emissions sources), calculation approach (including any emission factors used and the source of the emission factors), and any calculation tools used to calculate the GHG emissions. A registrant's description of its approach to categorization of emissions and emissions sources should explain how it determined the

emissions to include as direct emissions, for the purpose of calculating its Scope 1 emissions, and indirect emissions, for the purpose of calculating its Scope 2 emissions.

(2) The organizational boundary and any determination of whether a registrant owns or controls a particular source for GHG emissions must be consistent with the scope of entities, operations, assets, and other holdings within its business organization as those included in, and based upon the same set of accounting principles applicable to, the registrant's consolidated financial statements.

(3) A registrant must use the same organizational boundaries when calculating its Scope 1 emissions and Scope 2 emissions. If required to disclose Scope 3 emissions, a registrant must also apply the same organizational boundaries used when determining its Scopes 1 and 2 emissions as an initial step in identifying the sources of indirect emissions from activities in its value chain over which it lacks ownership and control and which must be included in the calculation of its Scope 3 emissions. Once a registrant has determined its organizational and operational boundaries, a registrant must be consistent in its use of those boundaries when calculating its GHG emissions.

(4) A registrant may use reasonable estimates when disclosing its GHG emissions as long as it also describes the assumptions underlying, and its reasons for using, the estimates.

(i) When disclosing its GHG emissions for its most recently completed fiscal year, if actual reported data is not reasonably available, a registrant may use a reasonable estimate of its GHG emissions for its fourth fiscal quarter, together with actual, determined GHG emissions data for the first three fiscal quarters, as long as the registrant promptly discloses in a subsequent filing any material difference between the estimate used and the actual, determined GHG emissions data for the fourth fiscal quarter.

(ii) In addition to the use of reasonable estimates, a registrant may present its estimated Scope 3 emissions in terms of a range as long as it discloses its reasons for using the range and the underlying assumptions.

(5) A registrant must disclose, to the extent material and as applicable, any use of third-party data when calculating its GHG emissions, regardless of the particular scope of emissions. When disclosing the use of third-party data, it must identify the source of such data and the process the registrant undertook to obtain and assess such data.

(6) A registrant must disclose any material change to the methodology or assumptions underlying its GHG emissions disclosure from the previous fiscal year.

(7) A registrant must disclose, to the extent material and as applicable, any gaps in the data required to calculate its GHG emissions. A registrant's GHG emissions disclosure should provide investors with a reasonably complete understanding of the registrant's GHG emissions in each scope of emissions. If a registrant discloses any data gaps encountered when calculating its GHG emissions, it must also discuss whether it used proxy data or another method to address such gaps, and how its accounting for any data gaps has affected the accuracy or completeness of its GHG emissions disclosure.

(8) When determining whether its Scope 3 emissions are material, and when disclosing those emissions, in addition to emissions from activities in its value chain, a registrant must include GHG emissions from outsourced activities that it previously conducted as part of its own operations, as reflected in the financial statements for the periods covered in the filing.

(9) If required to disclose Scope 3 emissions, when calculating those emissions, if there was any significant overlap in the categories of activities producing the Scope 3 emissions, a

registrant must describe the overlap, how it accounted for the overlap, and the effect on its disclosed total Scope 3 emissions.

(f) Liability for Scope 3 emissions disclosures.

(1) A statement within the coverage of paragraph (f)(2) of this section that is made by or on behalf of a registrant is deemed not to be a fraudulent statement (as defined in paragraph (f)(3) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(2) This paragraph (f) applies to any statement regarding Scope 3 emissions that is disclosed pursuant to §§ 229.1500 through 229.1506 and made in a document filed with the Commission.

(3) For the purpose of this paragraph (f), the term fraudulent statement shall mean a statement that is an untrue statement of material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or that constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud as those terms are used in the Securities Act of 1933 or the Securities Exchange Act of 1934 or the rules or regulations promulgated thereunder.

§ 229.1505 Attestation of Scope 1 and Scope 2 emissions disclosure.

(a) Attestation.

(1) A registrant that is required to provide Scope 1 and Scope 2 emissions disclosure pursuant to § 229.1504 and that is an accelerated filer or a large accelerated filer must include an attestation report covering such disclosure in the relevant filing. For filings made by an accelerated filer or a large accelerated filer for the second and third fiscal years after the

compliance date for § 229.1504, the attestation engagement must, at a minimum, be at a limited assurance level and cover the registrant’s Scope 1 and Scope 2 emissions disclosure. For filings made by an accelerated filer or large accelerated filer for the fourth fiscal year after the compliance date for § 229.1504 and thereafter, the attestation engagement must be at a reasonable assurance level and, at a minimum, cover the registrant’s Scope 1 and Scope 2 emissions disclosures.

(2) Any attestation report required under this section must be provided pursuant to standards that are publicly available at no cost and are established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment. An accelerated filer or a large accelerated filer obtaining voluntary assurance prior to the first required fiscal year must comply with subparagraph (e) of this section. Voluntary assurance obtained by an accelerated filer or a large accelerated filer thereafter must follow the requirements of paragraphs (b) through (d) of this section and must use the same attestation standard as the required assurance over Scope 1 and Scope 2.

(b) *GHG emissions attestation provider.* The GHG emissions attestation report required by paragraph (a) of this section must be prepared and signed by a GHG emissions attestation provider. A GHG emissions attestation provider means a person or a firm that has all of the following characteristics:

(1) Is an expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions. Significant experience means having sufficient competence and capabilities necessary to:

(i) Perform engagements in accordance with professional standards and applicable legal and regulatory requirements; and

(ii) Enable the service provider to issue reports that are appropriate under the circumstances.

(2) Is independent with respect to the registrant, and any of its affiliates, for whom it is providing the attestation report, during the attestation and professional engagement period.

(i) A GHG emissions attestation provider is not independent if such attestation provider is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that such attestation provider is not, capable of exercising objective and impartial judgment on all issues encompassed within the attestation provider's engagement.

(ii) In determining whether a GHG emissions attestation provider is independent, the Commission will consider:

(A) Whether a relationship or the provision of a service creates a mutual or conflicting interest between the attestation provider and the registrant (or any of its affiliates), places the attestation provider in the position of attesting such attestation provider's own work, results in the attestation provider acting as management or an employee of the registrant (or any of its affiliates), or places the attestation provider in a position of being an advocate for the registrant (or any of its affiliates); and

(B) All relevant circumstances, including all financial or other relationships between the attestation provider and the registrant (or any of its affiliates), and not just those relating to reports filed with the Commission.

(iii) The term "affiliates" as used in this section has the meaning provided in 17 CFR 210.2-01, except that references to "audit" are deemed to be references to the attestation services provided pursuant to this section.

(iv) The term “attestation and professional engagement period” as used in this section means both:

(A) The period covered by the attestation report; and

(B) The period of the engagement to attest to the registrant’s GHG emissions or to prepare a report filed with the Commission (“the professional engagement period”). The professional engagement period begins when the GHG attestation service provider either signs an initial engagement letter (or other agreement to attest a registrant’s GHG emissions) or begins attest procedures, whichever is earlier.

(c) *Attestation report requirements.* The GHG emissions attestation report required by paragraph (a) of this section must be included in the separately captioned “Climate-Related Disclosure” section in the filing. The form and content of the attestation report must follow the requirements set forth by the attestation standard (or standards) used by the GHG emissions attestation provider. Notwithstanding the foregoing, at a minimum the report must include the following:

(1) An identification or description of the subject matter or assertion being reported on, including the point in time or period of time to which the measurement or evaluation of the subject matter or assertion relates;

(2) An identification of the criteria against which the subject matter was measured or evaluated;

(3) A statement that identifies the level of assurance provided and describes the nature of the engagement;

(4) A statement that identifies the attestation standard (or standards) used;

(5) A statement that describes the registrant’s responsibility to report on the subject matter or assertion being reported on;

(6) A statement that describes the attestation provider’s responsibilities in connection with the preparation of the attestation report;

(7) A statement that the attestation provider is independent, as required by paragraph (a) of this section;

(8) For a limited assurance engagement, a description of the work performed as a basis for the attestation provider’s conclusion;

(9) A statement that describes significant inherent limitations, if any, associated with the measurement or evaluation of the subject matter against the criteria;

(10) The GHG emissions attestation provider’s conclusion or opinion, based on the applicable attestation standard(s) used;

(11) The signature of the attestation provider (whether by an individual or a person signing on behalf of the attestation provider’s firm);

(12) The city and state where the attestation report has been issued; and

(13) The date of the report.

(d) *Additional disclosures by the registrant.* In addition to including the GHG emissions attestation report required by paragraph (a) of this section, a large accelerated filer and an accelerated filer must disclose the following information within the separately captioned “Climate-Related Disclosure” section in the filing, after requesting relevant information from any GHG emissions attestation provider as necessary:

(1) Whether the attestation provider has a license from any licensing or accreditation body to provide assurance, and if so, identify the licensing or accreditation body, and whether the attestation provider is a member in good standing of that licensing or accreditation body;

(2) Whether the GHG emissions attestation engagement is subject to any oversight inspection program, and if so, which program (or programs); and

(3) Whether the attestation provider is subject to record-keeping requirements with respect to the work performed for the GHG emissions attestation engagement and, if so, identify the record-keeping requirements and the duration of those requirements.

(e) *Disclosure of voluntary attestation.* A registrant that is not required to include a GHG emissions attestation report pursuant to paragraph (a) of this section must disclose within the separately captioned “Climate-Related Disclosure” section in the filing the following information if the registrant’s GHG emissions disclosures were subject to third-party attestation or verification:

(1) Identify the provider of such attestation or verification;

(2) Describe the attestation or verification standard used;

(3) Describe the level and scope of attestation or verification provided;

(4) Briefly describe the results of the attestation or verification;

(5) Disclose whether the third-party service provider has any other business relationships with or has provided any other professional services to the registrant that may lead to an impairment of the service provider’s independence with respect to the registrant; and

(6) Disclose any oversight inspection program to which the service provider is subject (*e.g.*, the AICPA’s peer review program).

§ 229.1506 (Item 1506) Targets and goals.

(a)(1) A registrant must provide disclosure pursuant to this section if it has set any targets or goals related to the reduction of GHG emissions, or any other climate-related target or goal (e.g., regarding energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products) such as actual or anticipated regulatory requirements, market constraints, or other goals established by a climate-related treaty, law, regulation, policy, or organization.

(2) A registrant may provide the disclosure required by this section as part of its disclosure in response to § 229.1502 or § 229.1503.

(b) If the registrant has set climate-related targets or goals, disclose the targets or goals, including, as applicable, a description of:

- (1) The scope of activities and emissions included in the target;
- (2) The unit of measurement, including whether the target is absolute or intensity based;
- (3) The defined time horizon by which the target is intended to be achieved, and whether the time horizon is consistent with one or more goals established by a climate-related treaty, law, regulation, policy, or organization;
- (4) The defined baseline time period and baseline emissions against which progress will be tracked with a consistent base year set for multiple targets;
- (5) Any interim targets set by the registrant; and
- (6) How the registrant intends to meet its climate-related targets or goals. For example, for a target or goal regarding net GHG emissions reduction, the discussion could include a strategy to increase energy efficiency, transition to lower carbon products, purchase carbon offsets or RECs, or engage in carbon removal and carbon storage.

(c) Disclose relevant data to indicate whether the registrant is making progress toward meeting the target or goal and how such progress has been achieved. A registrant must update this disclosure each fiscal year by describing the actions taken during the year to achieve its targets or goals.

(d) If carbon offsets or RECs have been used as part of a registrant’s plan to achieve climate-related targets or goals, disclose the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECS, the source of the offsets or RECs, a description and location of the underlying projects, any registries or other authentication of the offsets or RECs, and the cost of the offsets or RECs.

§ 229.1507 (Item 1507) Interactive data requirement.

Provide the disclosure required by this Subpart 1500 in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S-T) in accordance with the EDGAR Filer Manual.

PART 232— REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

6. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

7. Amend §232.405 by adding paragraphs (b)(1)(iii), (b)(3)(i)(C), and (b)(4) as follows:

§232.405 Interactive Data File submissions.

* * * * *

(b) * * *

(1) * * *

(iii) As applicable, the disclosure set forth in paragraph (4) of this section.

* * * * *

(3) * * *

(i) * * *

(C) The disclosure set forth in paragraph (4) of this section.

(4) An Interactive Data File must consist of the disclosure provided under 17 CFR 229 (Regulation S-K) and related provisions that is required to be tagged, including, as applicable:

(i) The climate-related information required by Subpart 1500 of Regulation S-K (§§ 229.1500 through 229.1507 of this chapter).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The general authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37; and sec. 107, Pub. L. 112-106, 126 Stat. 312, unless otherwise noted.

* * * * *

9. Amend Form S-1 (referenced in § 239.11) by adding Item 11(o) to Part I to read as follows:

Note: The text of Form S-1 does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM S-1

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 11. Information with Respect to the Registrant.

* * * * *

(o) Information required by Subpart 1500 of Regulation S-K (17 CFR 229.1500 through 229.1507), in a part of the registration statement that is separately captioned as *Climate-Related Disclosure*. Pursuant to Rule 411 (17 CFR 230.411) and General Instruction VII of this form, a registrant may incorporate by reference disclosure from other parts of the registration statement (e.g., Risk Factors, Business, Management’s Discussion and Analysis, or the financial statements) or from a separately filed annual report or other periodic report into the Climate-Related Disclosure item if it is responsive to the topics specified in Items 1500 through 1507 of Regulation S-K.

* * * * *

10. Amend Form S-11 (referenced in § 239.18) by adding Item 9 to Part I to read as follows:

Note: The text of Form S-11 does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM S-11

* * * * *

PART I. INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 9. Climate-related disclosure. Provide the information required by Subpart 1500 of Regulation S-K (17 CFR 229.1500 through 229.1507), in a part of the registration statement that is separately captioned as *Climate-Related Disclosure*. Pursuant to Rule 411 (17 CFR 230.411) and General Instruction H of this form, a registrant may incorporate by reference disclosure from other parts of the registration statement (*e.g.*, Risk Factors, Management’s Discussion and Analysis, or the financial statements) or from a separately filed annual report or other periodic report into the Climate-Related Disclosure item if it is responsive to the topics specified in Items 1500 through 1507 of Regulation S-K.

* * * * *

11. Amend Form S-4 (referenced in § 239.25) by:

a. Adding paragraph (k) to Item 14 to Part I; and

b. Adding paragraph (b)(11) to Item 17 to Part I.

The additions read as follows:

Note: The text of Form S-4 does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM S-4

* * * * *

PART I

INFORMATION REQUIRED IN THE PROSPECTUS

* * * * *

Item 14. Information with Respect to Registrants Other Than S-3 Registrants.

* * * * *

(k) Information required by Subpart 1500 of Regulation S-K (17 CFR 229.1500 through 229.1507), in a part of the registration statement that is separately captioned as *Climate-Related Disclosure*. Pursuant to Rule 411 (17 CFR 230.411) a registrant may incorporate by reference disclosure from other parts of the registration statement (*e.g.*, Risk Factors, Description of Business, Management’s Discussion and Analysis, or the financial statements) into the Climate-Related Disclosure item if it is responsive to the topics specified in Items 1500 through 1507 of Regulation S-K.

* * * * *

Item 17. Information with Respect to Companies Other Than S-3 Companies.

* * * * *

(b) * * *

(11) Information required by Items 1500-1507 of Regulation S-K (17 CFR § 229.1500 through § 229.1507), in a part of the registration statement that is separately captioned as *Climate-Related Disclosure of Company Being Acquired*.

* * * * *

12. Amend Form F-4 (referenced in § 239.34) by:

- a. Adding paragraph (k) to Item 14 to Part I; and
- b. Amending paragraph (3) to Item 17(b) to Part I.

The additions read as follows:

-Note: The text of Form F-4 does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM F-4

* * * * *

PART I

INFORMATION REQUIRED IN THE PROSPECTUS

* * * * *

Item 14. Information With Respect to Foreign Registrants Other Than F-3 Registrants.

* * * * *

(k) Item 3.E of Form 20-F, climate-related disclosure.

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F-3 Companies.

* * * * *

(b) * * *

(3) Item 3.E of Form 20-F, climate-related disclosure;

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

13. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112-106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112-106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114-94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116-222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107-204, 116 Stat. 745, and secs. 2 and 3, Pub. L. 116-222, 134 Stat. 1063.

Section 249.308a is also issued under secs. 3(a) and 302, Pub. L. 107-204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107-204, 116 Stat. 745.

* * * * *

14. Amend Form 10 (referenced in § 249.210) by adding Item 3.A (“Climate-Related Disclosure”) to read as follows:

Note: The text of Form 10 does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM 10

* * * * *

Item 3.A Climate-Related Disclosure. Provide the information required by Subpart 1500 of Regulation S-K (17 CFR 229.1500 through 229.1507), in a part of the registration statement that is separately captioned as *Climate-Related Disclosure*. Pursuant to Exchange Act Rule 12b-23 (17 CFR 240.12b-23) and General Instruction F of this form, a registrant may incorporate by reference disclosure from other parts of the registration statement (*e.g.*, Risk Factors, Business, Management’s Discussion and Analysis, or the financial statements) into the Climate-Related Disclosure item if it is responsive to the topics specified in Item 1500 through 1507 of Regulation S-K.

* * * * *

15. Amend Form 20-F (referenced in § 249.220f) by adding Item 3.E (“Climate-related disclosure”) to Part I to read as follows:

Note: The text of Form 20-F does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM 20-F

* * * * *

PART I

* * * * *

Item 3. Key Information

* * * * *

E. Climate-related disclosure.

1. *Required disclosure.* The company must provide disclosure responsive to the topics specified in Subpart 1500 of Regulation S-K (17 CFR 229.1500 through 229.1507) in a part of the registration statement or annual report that is separately captioned as *Climate-Related Disclosure*.

2. *Incorporation by reference.* Pursuant to Rule 12b-23 (17 CFR 240.12b-23), the company may incorporate by reference disclosure from other parts of the registration statement or annual report (*e.g.*, Risk Factors, Information on the Company, Operating and Financial Review and Prospects, or the financial statements) into the Climate-Related Disclosure item if it is responsive to the topics specified in Item 1500 through 1507 of Regulation S-K.

* * * * *

16. Amend Form 6-K (referenced in § 249.306) by adding the phrase “climate-related disclosure;” before the phrase “and any other information which the registrant deems of material importance to security holders.” in the second paragraph of General Instruction B.

17. Amend Form 10-Q (referenced in § 249.308a) by adding Item 1.B (“Climate-Related disclosure”) to Part II (“Other Information”) to read as follows:

Note: The text of Form 10-Q does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM 10-Q

* * * * *

Item 1B. Climate-Related Disclosure. Disclose any material changes to the disclosures provided in response to Item 6 (“Climate-related disclosure”) of Part II to the registrant’s Form 10-K (17 CFR 229.310).

* * * * *

18. Amend Form 10-K (referenced in § 249.310) by:

a. Revising paragraph (1)(g) of General Instruction J (“Use of this Form by Asset-backed Issuers”); and

b. Adding Item 6 (“Climate-Related Disclosure”) to Part II to read as follows:

The revision and addition read as follows:

Note: The text of Form 10-K does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM 10-K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

J. Use of this Form by Asset-Backed Issuers.

* * * * *

(1) * * *

(g) Item 6, Climate-Related Disclosure;

* * * * *

Part II

* * * * *

Item 6. Climate-Related Disclosure

Provide the disclosure required by Subpart 1500 of Regulation S-K (17 CFR 229.1500 through 229.1507) in a part of the annual report that is separately captioned as *Climate-Related Disclosure*. Pursuant to Rule 12b-23 (17 CFR 240.12b-23) and General Instruction G of this form, a registrant may incorporate by reference disclosure from other parts of the registration statement or annual report (*e.g.*, Risk Factors, Business, Management’s Discussion and Analysis, or the financial statements) into the Climate-Related Disclosure item if it is responsive to the topics specified in Item 1500 through 1507 of Regulation S-K.

* * * * *

VII. STATUTORY AUTHORITY

The amendments contained in this release are being adopted under the authority set forth in Sections 7, 10, and 19(a) of the Securities Act, as amended, and Sections 3, 12, 13, 15, and 23(a) of the Exchange Act, as amended.

List of Subjects in 17 CFR Parts 229, 239, and 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, the Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 – REGULATION S-K

1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11 and 7201 *et seq.*; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112-106, 126 Stat. 310 (2012).

2. Amend §229.101 by:

- a. Revising paragraphs (a) introductory text and (a)(1);
- b. Redesignating paragraph (a)(2) as paragraph (a)(3);
- c. Adding new paragraph (a)(2); and
- d. Revising paragraph (c) and paragraph (h) introductory text.

The revisions and addition read as follows:

§229.101 (Item 101) Description of business.

(a) *General development of business.* Describe the general development of the business of the registrant, its subsidiaries, and any predecessor(s).

(1) In describing developments, only information material to an understanding of the general development of the business is required. Disclosure may include, but should not be limited to, the following topics:

- (i) Any material changes to a previously disclosed business strategy;
- (ii) The nature and effects of any material bankruptcy, receivership, or any similar proceeding with respect to the registrant or any of its significant subsidiaries;
- (iii) The nature and effects of any material reclassification, merger or consolidation of the registrant or any of its significant subsidiaries; and
- (iv) The acquisition or disposition of any material amount of assets otherwise than in

the ordinary course of business.

(2) Notwithstanding the provisions of § 230.411(b) or § 240.12b-23(a) of this chapter, as applicable, a registrant may only forgo providing a full discussion of the general development of its business for a filing other than an initial registration statement if it provides an update to the general development of its business, disclosing all of the material developments that have occurred since the most recent registration statement or report that includes a full discussion of the general development of its business. In addition, the registrant must incorporate by reference, and include one active hyperlink to one registration statement or report that includes, the full discussion of the general development of the registrant's business.

* * * * *

(c) *Description of business.* (1) Describe the business done and intended to be done by the registrant and its subsidiaries, focusing upon the registrant's dominant segment or each reportable segment about which financial information is presented in the financial statements. When describing each segment, only information material to an understanding of the business taken as a whole is required. Disclosure may include, but should not be limited to, the information specified in paragraphs (c)(1)(i) through (v) of this section.

(i) Revenue-generating activities, products and/or services, and any dependence on revenue-generating activities, key products, services, product families or customers, including governmental customers;

(ii) Status of development efforts for new or enhanced products, trends in market demand and competitive conditions;

(iii) Resources material to a registrant's business, such as:

(A) Sources and availability of raw materials; and

(B) The duration and effect of all patents, trademarks, licenses, franchises, and concessions held;

(iv) A description of any material portion of the business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government; and

(v) The extent to which the business is or may be seasonal.

(2) Discuss the information specified in paragraphs (c)(2)(i) and (ii) of this section with respect to, and to the extent material to an understanding of, the registrant's business taken as a whole, except that, if the information is material to a particular segment, you should additionally identify that segment.

(i) The material effects that compliance with government regulations, including environmental regulations, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries, including the estimated capital expenditures for environmental control facilities for the current fiscal year and any other material subsequent period; and

(ii) A description of the registrant's human capital resources, including the number of persons employed by the registrant, and any human capital measures or objectives that the registrant focuses on in managing the business (such as, depending on the nature of the registrant's business and workforce, measures or objectives that address the development, attraction and retention of personnel).

* * * * *

(h) *Smaller reporting companies.* A smaller reporting company, as defined by §229.10(f)(1), may satisfy its obligations under this Item by describing the development of its

business pursuant to this paragraph (h). In describing developments under paragraphs (h)(1) through (3), information should be provided for the period of time that is material to an understanding of the general development of the business. Notwithstanding the provisions of § 230.411(b) or § 240.12b-23(a) of this chapter as applicable, a smaller reporting company may only forgo providing a full discussion of the general development of its business for a filing other than an initial registration statement if it provides an update to the general development of its business disclosing all of the material developments that have occurred since the most recent registration statement or report that includes a full discussion of the general development of its business. In addition, the smaller reporting company must incorporate by reference, and include one active hyperlink to one registration statement or report that includes, the full discussion of the general development of the registrant's business. If the smaller reporting company has not been in business for three years, provide the same information for predecessor(s) of the smaller reporting company if there are any. This business development description should include:

* * * * *

3. Revise § 229.103 to read as follows:

§229.103 (Item 103) Legal proceedings.

(a) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities. Information may be provided by hyperlink or cross-reference to legal proceedings disclosure

elsewhere in the document, such as in Management's Discussion & Analysis (MD&A), Risk Factors and notes to the financial statements.

(b) No information need be given under this section for proceedings:

(1) That involve negligence or other claims or actions if the business ordinarily results in such claims or actions, unless the claim or action departs from the normal kind of such claims or actions; or

(2) That involve primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same legal or factual issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

(c) Notwithstanding paragraph (b) of this section, disclosure under this section shall include, but shall not be limited to:

(1) Any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries;

(2) Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than five percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant, or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries;

(3) Administrative or judicial proceedings (including proceedings which present in large degree the same issues) arising under any Federal, State, or local provisions that have been enacted or adopted regulating the discharge of materials into the environment or primarily for

the purpose of protecting the environment. Such proceedings shall not be deemed “ordinary routine litigation incidental to the business” and shall be described if:

- (i) Such proceeding is material to the business or financial condition of the registrant;
- (ii) Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- (iii) A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$300,000 or, at the election of the registrant, such other threshold that (A) the registrant determines is reasonably designed to result in disclosure of any such proceeding that is material to the business or financial condition is disclosed, (B) the registrant discloses (including any change thereto) in each annual and quarterly report, and (C) does not exceed the lesser of \$1 million or one percent of the current assets of the registrant and its subsidiaries on a consolidated basis; provided, however, that such proceedings that are similar in nature may be grouped and described generically.

4. Revise § 229.105 to read as follows:

§ 229.105 (Item 105) Risk factors.

(a) Where appropriate, provide under the caption “Risk Factors” a discussion of the material factors that make an investment in the registrant or offering speculative or risky. This discussion must be organized logically with relevant headings and each risk factor should be set forth under a subcaption that adequately describes the risk. The presentation of risks that could

apply generically to any registrant or any offering is discouraged, but to the extent generic risk factors are presented, disclose them at the end of the risk factor section under the caption “General Risk Factors.”

(b) Concisely explain how each risk affects the registrant or the securities being offered. If the discussion is longer than 15 pages, include in the forepart of the prospectus or annual report, as applicable, a series of concise, bulleted or numbered statements that is no more than two pages summarizing the principal factors that make an investment in the registrant or offering speculative or risky. If the risk factor discussion is included in a registration statement, it must immediately follow the summary section required by § 229.503 (Item 503 of Regulation S-K). If you do not include a summary section, the risk factor section must immediately follow the cover page of the prospectus or the pricing information section that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on Rule 430A (§ 230.430A of this chapter). The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37; and sec. 107, Pub. L. 112-106, 126 Stat. 312, unless otherwise noted.

* * * * *

6. Amend Form S-4 (referenced in § 239.25) by revising paragraph (b)(3)(i) of Item 12

under Part I, Section B (“Information About the Registrant”) to read as follows:

Note: The text of Form S-4 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I

INFORMATION REQUIRED IN THE PROSPECTUS

* * * * *

B. INFORMATION ABOUT THE REGISTRANT

* * * * *

Item 12. Information with Respect to S-3 Registrants.

* * * * *

(b) * * *

(3) Furnish the information required by the following:

(i) Item 101(c)(1)(i) of Regulation S-K (§ 229.101(c)(1)(i) of this chapter), industry segments, key products or services;

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss,

77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112-106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

8. Amend § 240.14a-101 by revising paragraph (a) of Item 7 of Schedule 14A to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. Directors and executive officers. * * *

(a) The information required by Item 103(c)(2) of Regulation S-K (§229.103(c)(2) of this chapter) with respect to directors and executive officers.

* * * * *

(f) Diverse Board Representation

(1) Definitions

For purposes of this Rule 5605(f):

“Diverse” means an individual who self-identifies in one or more of the following categories: Female, Underrepresented Minority, or LGBTQ+.

“Female” means an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth.

“Foreign Issuer” means (a) a Foreign Private Issuer (as defined in Rule 5005(a)(19)); or (b) a company that (i) is considered a “foreign issuer” under Rule 3b-4(b) under the Act and (ii) has its principal executive offices located outside of the United States.

“LGBTQ+” means an individual who self-identifies as any of the following: lesbian, gay, bisexual, transgender, or as a member of the queer community.

“Approval Date” means the date that the Commission issues an order granting the approval of this proposed Rule 5605(f).

“Smaller Reporting Company” has the definition set forth in Rule 12b-2 under the Act.

“Underrepresented Minority” means an individual who self-identifies as one or more of the following: Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or Two or More Races or Ethnicities.

“Two or More Races or Ethnicities” means a person who identifies with more than one of the following categories: White (not of Hispanic or Latinx origin), Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander.

(2) Diversity Objective

(A) General Objective

Each Company, except as described below in (B), (C) or (D), must have, or explain why it does not have, at least two members of its board of directors who are Diverse, including (i) at least one Diverse director who self-identifies as Female; and (ii) at least one Diverse director who self-identifies as an Underrepresented Minority or LGBTQ+.

(B) Foreign Issuers

(i) For purposes of this Rule 5605(f)(2)(B), (a) “Diverse” means an individual who self-identifies as one or more of the following: Female, LGBTQ+, or an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the country of the Company’s principal executive offices (as reported on the Company’s Form F-1, 10-K, 20-F or 40-F); and (b) “board of directors” means, in the case of a Foreign Issuer with a two-tier board system, the Company’s supervisory or non-management board.

(ii) Subject to subparagraph (D) below, each Foreign Issuer must have, or explain why it does not have, at least two members of its board of directors who are Diverse, including at least one Diverse director who self-identifies as Female. For greater clarity, the second Diverse director may include an individual who self-identifies as one or more of the following: Female, LGBTQ+, or an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the country of the Company’s principal executive offices.

(C) Smaller Reporting Companies

Subject to subparagraph (D) below, each Smaller Reporting Company must have, or explain why it does not have, at least two members of its board of directors who are Diverse, including at least one Diverse director who self-identifies as Female. For greater clarity, the second Diverse director may include an individual who self-identifies as one or more of the following: Female, LGBTQ+, or an Underrepresented Minority.

(D) Companies with Smaller Boards

Each Company with a board of directors of five or fewer members must have, or explain why it does not have, at least one member of its board of directors who is Diverse. If a Company has five members on its board of directors before becoming subject to this Rule 5605(f), it shall not become subject to the requirement of subparagraphs (A), (B) or (C) to have at least two members of its board of directors who are Diverse if it adds one director to satisfy this subparagraph (D), thereby becoming a six member board. However, a company would become subject to Rule 5605(f)(2)(A), (B) or (C) if it subsequently expands its board.

(3) Alternative Public Disclosure

If a Company satisfies the requirements of Rule 5605(f)(2) by explaining why it does not meet the applicable diversity objectives of Rule 5605(f)(2), the Company must: (i) specify the requirements of Rule 5605(f)(2) that are applicable; and (ii) explain the reasons why it does not have two Diverse directors (or one Diverse director for Companies subject to Rule 5605(f)(2)(D)). Such disclosure must be provided on or before December 31 either: (a) in any proxy statement or any information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F); or (b) on the Company’s website. If the Company provides such disclosure on its website, then the Company

must submit such disclosure concurrently with the filing made pursuant to (a) and submit a URL link to the disclosure either through the Nasdaq Listing Center or via an e-mail to drivingdiversity@nasdaq.com, within one business day after such posting.

(4) Exempt Companies

The following types of companies are exempt from the requirements of this Rule 5605(f) (“Exempt Companies”): acquisition companies listed under IM-5101-2; asset-backed issuers and other passive issuers (as set forth in Rule 5615(a)(1)); cooperatives (as set forth in Rule 5615(a)(2)); limited partnerships (as set forth in Rule 5615(a)(4)); management investment companies (as set forth in Rule 5615(a)(5)); issuers of non-voting preferred securities, debt securities and Derivative Securities (as set forth in Rule 5615(a)(6)) that do not have equity securities listed on Nasdaq; and issuers of securities listed under the Rule 5700 Series.

(5) Phase-in Period

(A) Any Company newly listing on The Nasdaq Global Select Market or The Nasdaq Global Market that was not previously subject to a substantially similar requirement of another national securities exchange, including through an initial public offering, direct listing, transfer from the over-the-counter market or another exchange, in connection with a spin-off or carve-out from a company listed on Nasdaq or another exchange, or through a merger with an acquisition company listed under IM-5101-2, shall be permitted to satisfy the requirement of Rule 5605(f)(2) to have, or explain why it does not have: (i) at least one Diverse director by the later of: (a) one year from the date of listing; or (b) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company’s first annual meeting of shareholders subsequent to the Company’s listing; and (ii) at least two Diverse directors by the later of: (a) two years from the date of listing; or (b) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company’s second annual meeting of shareholders subsequent to the Company’s listing.

(B) Any Company newly listing on The Nasdaq Capital Market that was not previously subject to a substantially similar requirement of another national securities exchange, including through an initial public offering, direct listing, transfer from the over-the-counter market or another exchange, in connection with a spin-off or carve-out from a company listed on Nasdaq or another exchange, or through a merger with an acquisition company listed under IM-5101-2, shall be permitted to satisfy the requirement of Rule 5605(f)(2) to have, or explain why it does not have at least two Diverse directors by the later of: (a) two years from the date of listing; or (b) the date the Company files its proxy statement or its information

statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company's second annual meeting of shareholders subsequent to the Company's listing.

(C) Any Company that ceases to be a Foreign Issuer, a Smaller Reporting Company, or an Exempt Company shall be permitted to satisfy the requirements of Rule 5605(f) by the later of: (i) one year from the date that the Company no longer qualifies as a Foreign Issuer, a Smaller Reporting Company or an Exempt Company, respectively; or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company's first annual meeting of shareholders subsequent to such event.

(D) Any Company newly listing on The Nasdaq Global Select Market, The Nasdaq Global Market and The Nasdaq Capital Market that has a board of five or fewer members and was not previously subject to a substantially similar requirement of another national securities exchange, including through an initial public offering, direct listing, transfer from the over-the-counter market or another exchange, in connection with a spin-off or carve-out from a company listed on Nasdaq or another exchange, or through a merger with an acquisition company listed under IM-5101-2, shall be permitted to satisfy the requirement of Rule 5605(f)(2) to have, or explain why it does not have at least one Diverse director by the later of: (a) two years from the date of listing; or (b) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company's second annual meeting of shareholders subsequent to the Company's listing.

(6) Cure Period and Grace Period

(A) If a Company (i) does not meet the applicable diversity objectives set forth under Rule 5605(f)(2) and fails to provide the disclosure required by Rule 5605(f)(3), or (ii) fails to hold an annual meeting of shareholders during the applicable periods in Rule 5605(f)(5) or (7) and therefore fails to meet, or explain why it does not meet, the diversity objectives of Rule 5605(f)(2), the Listing Qualifications Department will promptly notify the Company and inform it that it has until the later of its next annual shareholders meeting or 180 days from the event that caused the deficiency to cure the deficiency.

(B) A Company that satisfied the diversity objectives of Rule 5605(f)(2) within the timeframes set forth in Rule 5605(f)(7), but ceases to meet the diversity objectives of Rule 5605(f)(2) due to a vacancy on its board of directors, shall have until the later of: (i) one year from the date of vacancy; or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) in the calendar year following the year of the date of vacancy, to satisfy Rule 5605(f)(2) or (3). In lieu of providing

the disclosure required by Rule 5605(f)(3), a Company relying on this provision may publicly disclose that it is relying on the grace period provided by this Rule 5605(f)(6)(B). Such disclosure must be provided in advance of the Company's next annual meeting of shareholders: (a) in any proxy statement or any information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F); or (b) on the Company's website. If the Company provides such disclosure on its website, then the Company must submit such disclosure concurrently with the filing made pursuant to (a) and submit a URL link to the disclosure through the Nasdaq Listing Center, within one business day after such posting.

(7) Effective Dates/Transition

(A) Each Company listed on The Nasdaq Global Select Market, The Nasdaq Global Market, and The Nasdaq Capital Market (including a Company with a smaller board under Rule 5606(f)(2)(D)) must have, or explain why it does not have, at least one Diverse director by December 31, 2023.

(B) Each Company listed on The Nasdaq Global Select Market or The Nasdaq Global Market must have, or explain why it does not have, at least two Diverse directors by December 31, 2025.

(C) Each Company listed on The Nasdaq Capital Market must have, or explain why it does not have, at least two Diverse directors by December 31, 2026.

(D) Notwithstanding the foregoing, a Company is not required to comply with the requirements of this Rule 5605(f) prior to the end of the phase-in periods described in Rule 5605(f)(5), if applicable.

(E) A company listing after the Approval Date, but prior to the end of the periods set forth in this subparagraph (7), must fully satisfy the requirements of this Rule 5605(f) by the later of the periods set forth in this subparagraph (7) or the two year phase-in periods set forth in Rule 5605(f)(5).

(F) A company listed on The Nasdaq Capital Market that transfers to The Nasdaq Global Select Market or The Nasdaq Global Market after the Approval Date, but prior to the end of the periods set forth in this subparagraph (7), must satisfy the requirements of this Rule 5605(f) by the later of: (i) the periods set forth in this subparagraph (7)(C); or (ii) one year from the date of transfer.

Amended July 22, 2010 (SR-NASDAQ-2008-014); amended Jan. 11, 2013 (SR-NASDAQ-2012-109); amended Aug. 6, 2021 (SR-NASDAQ-2020-081); amended Dec. 12, 2022 (SR-NASDAQ-2022-075), operative Jan. 11, 2023.

5606. Board Diversity Disclosure

(a) Each Company must annually disclose, to the extent permitted by applicable law, information on each director's voluntary self-identified characteristics in a substantially similar format below. Following the first year of disclosure, all companies must disclose the current year and immediately prior year diversity statistics using the Board Diversity Matrix.

Board Diversity Matrix (As of [DATE])

Total Number of Directors	#			Did Not Disclose Gender
	Female	Male	Non-Binary	
Part I: Gender Identity				
Directors	#	#	#	#
Part II: Demographic Background				
African American or Black	#	#	#	#
Alaskan Native or Native American	#	#	#	#
Asian	#	#	#	#
Hispanic or Latinx	#	#	#	#
Native Hawaiian or Pacific Islander	#	#	#	#
White	#	#	#	#
Two or More Races or Ethnicities	#	#	#	#
LGBTQ+			#	
Did Not Disclose Demographic Background			#	

However, a Company that qualifies as a Foreign Issuer under Rule 5605(f)(1) may elect to use the format below:

Board Diversity Matrix (As of [DATE])

To be completed by Foreign Issuers (with principal executive offices outside of the U.S.) and Foreign Private Issuers

Country of Principal Executive Offices	[Insert Country Name]			
Foreign Private Issuer	Yes/No			
Disclosure Prohibited under Home Country Law	Yes/No			
Total Number of Directors	#			
	Female	Male	Non-Binary	Did Not Disclose Gender
Part I: Gender Identity				
Directors	#	#	#	#
Part II: Demographic Background				
Underrepresented Individual in Home Country Jurisdiction			#	
LGBTQ+			#	
Did Not Disclose Demographic Background			#	

(b) The disclosure required by this Rule 5606 must be provided on or before December 31 either: (a) in any proxy statement or any information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F); or (b) on the Company's website. If the Company provides such disclosure on its website, then the Company must submit such disclosure concurrently with the filing made pursuant to (a) and submit a URL link to the disclosure either through the Nasdaq Listing Center or via an e-mail to drivingdiversity@nasdaq.com, within one business day after such posting.

(c) This Rule 5606 shall not apply to Exempt Companies as defined in Rule 5605(f)(4).

(d) A Company newly listing on Nasdaq that was not previously subject to a substantially similar requirement of another national securities exchange, including through an initial public offering, direct listing, transfer from the over-the-counter market or another exchange, in connection with a spin-off or carve-out from a company listed on Nasdaq or another exchange, or through a merger with an acquisition company listed under IM-5101-2, must satisfy the requirement of this Rule 5606 within one year of listing.

Adopted Aug. 6, 2021 (SR-NASDAQ-2020-081); amended Dec. 12, 2022 (SR-NASDAQ-2022-075),
operative Jan. 11, 2023.