# DLA Piper Global Women's Leadership Summit

September 19-20, 2022
Chicago, IL

**Crisis Management in Unprecedented Times: ESG Considerations in a Brand Crisis**

Tuesday, September 20, 2022
10:00 am – 11:00 am CT

Moderator

**Angela Agrusa**

Managing Partner, Los Angeles
Co-Chair, Food and Beverage Subsector
Member, DLA Piper's Executive Committee

*DLA Piper*

Presenters

**Tammy Albarrán**

Vice President
Chief Deputy General Counsel
Deputy Corporate Secretary

*Uber*

**Elizabeth Lampert**

President

*Elizabeth Lampert PR*

**Ama Romaine**

Global General Counsel of Real Estate Asset Management

*Blackstone*

**Effie D. Silva**

Senior Vice President
General Counsel
Corporate Secretary
Chief Ethics & Compliance Officer

*Fresh Del Monte Produce Company*

Welcome to the brave new world of crisis management, where legal issues are inexorably intertwined with the actual physical event at the heart of what is typically considered a "crisis." Both short-term strategic decisions and longer-term strategic planning must account for critical ESG factors, including human capital issues, business model resilience, and supply chain resilience. Every organization is likely to encounter reputational issues with differing degrees of seriousness. When bad things happen, companies need the right legal counsel and strategy for working their way out of a mess and avoiding risk. Our panelists will address the preventative measures companies can take before crisis occurs and the importance of proper communication when companies face risk created by adversity and accusation. They will share insights around pitfalls to avoid in the stages of crisis management during compromising times.

**Panel Discussion Outline**

A. **Introduction (5 minutes)**

B. **Discussion (40-45 minutes)**

   1. Introduction to topic: Increased corporate, societal and political focus on ESG has prompted an uptick in ESG-related litigation globally. These claims are emerging in a variety of ways across different jurisdictions, including "greenwashing" claims, climate change litigation, business and human rights claims and environmental contamination litigation. They are all characterized by their novelty and their attempts to push the boundaries of established liability frameworks.

      This means that businesses across a broad variety of sectors are having to manage this emerging risk. They are also grappling with the multi-jurisdictional nature of this litigation, with increasing attempts to hold corporations to account for harms allegedly occurring overseas and often in the businesses of third parties. The rise in so-called "parent company liability" claims is one example of this trend.

   2. Approach to ESG: Businesses today recognize the importance of having a positive impact on the world and embracing a social purpose beyond simply generating profits. Not only is it the right thing to do, but they face increasing pressure from multiple sources to make greater commitments and improved progress towards their environmental, social, and corporate governance (ESG) objectives.

      a. How does a successful brand like yours approach ESG considerations? Brand credibility, brand image and perceived quality

      b. Who do you believe is a bigger driving force in adoption of ESG initiatives—investors or consumers? Is it dependent on industry? Do you think the way an ESG program is shaped changes depending on the stakeholder group that pushes for that initiative?

      c. Despite the recent pushback on ESG ratings and climate disclosures from prominent voices like Tesla's head Elon Musk and HSBC's head of sustainable investing, government agencies around the globe are taking compliance and enforcement of ESG disclosure very seriously to ensure transparent and honest reporting for investors and other corporate stakeholders. Should governments get involved in ESG initiatives and do you believe government monitoring of ESG programs is inevitable?

d. Traditional ESG was thought of as a long-term concern. More recently it has become apparent that ESG planning and considerations can also make a company more resilient to short term issues. For example, reduction in emissions may be a long-term goal, but ability to respond to supply chain issues or PR snafus create short term crisis. How do you balance short and long term risks when putting ESG programs into place?

e. Legal departments are on the front lines of risk management in a traditional sense, but internally can be viewed as barriers to creativity. At what point should legal departments be brought into development of ESG programs and how can legal departments become collaborators as opposed to being seen as a stumbling block to innovation?

3. <u>Brand in Crisis- ESG considerations to address</u>

a. *Introduction to topic:* If the first wave of ESG was about marketing and promotion, then the second wave is shaping up to be about litigation and enforcement.

b. *ESG in times of Brand Crisis*: During any brand crisis, companies are balancing a number of factors- keeping their employees safe, responding to changes in demand, supply chain snafus, climate change, political uncertainty, social movements and stockholder demands. Because of the increased focus on ESG, virtually every company today has implemented some form of ESG.

i. Should companies approach crisis management differently now in a post-ESG world? If so, can you share a little bit with us about how ESG has changed crisis response?

ii. What ESG considerations are paramount in your view in the event of a brand crisis?

iii. How might we balance ESG with other interests during a crisis? Are there some examples you can share with the audience?

c. *ESG and Performance*: There is a risk to companies when their ESG statements and claims do not line up with the ESG conduct and performance. Particularly as the rise in ESG litigation has led to plaintiff counsel and even consumers/customers closely scrutinizing ESG statements and operational performance.

i. How do you internally ensure that the claims and the performance are lined up? How do you respond if the discrepancy is noted in the media or by consumers to minimize the damage to your brand and the litigation risk?

d. *ESG and Communications During a Crisis:* The 24/7 news cycle and social media has greatly increased the likelihood that a crisis will become public and amplified in a short period of time.

i. Some experts posit that internal communication in crafting and implementing an ESG program is one of the reasons it helps a company weather a crisis. However, I think we all appreciate that sometimes even with well laid plans, companies are challenged for things they say, do or sometimes even for the acts of one or two within the company. As a PR expert and someone who has worked with 100s of companies over the years, how do you work with companies during a crisis to help minimize any adverse impact on the brand?

ii. Should a crisis communications team be part of an ESG program? What would that team look like? And, when does that team get assembled? Is it possible to form that ESG crisis team before any sight of crisis?

4. *Beyond Direct Impact:* Sometimes a crisis may not impact a brand directly but can impact its employees, customers, and local communities where it operates. For example, Covid-19 significantly impacted schools and families with school aged children. The rising cost of real estate over the last few years has made some areas unaffordable to the working class and led to increases in homelessness [*and sex trafficking*?].

a. How can ESG tie into a crisis that may not directly impact the brand but still has an impact on the community?

**C. Looking Ahead (some of these questions can be part of audience Q&A)**

a. A 2016 article from the Institute of Banking, Finance and Accounting at Leuphana University in Germany found that female members on a management board have a positive impact on ESG performance. The study was limited to a sample of German and Austrian companies which have a 2-tier board system, unlike the US's one tier system. Do you have any experience with this? Does it give companies more incentive to promote women to boards if they are serious about ESG?

b. How do you build an ESG framework that is future-proofed for tomorrow's economic realities?

c. How important is to your company to develop a global approach to ESG?

**D. Q&A (5 minutes)**

a. How does access to data/information impact creation and implementation of an ESG program? How can a company ensure they have all of the relevant information?
b. How do you measure compliance with initiatives?
c. ESG practice and reporting is not yet standardized. Do you think it should be? Would that make it easier or harder for companies to put ESG programs into place?

**E. Closing Remarks (5 minutes)**

DLA PIPER

# DLA Piper Global Women's Leadership Summit


Angela Agrusa
Managing Partner, Los Angeles
Co-Chair, Food and Beverage Subsector
Member, DLA Piper’s Executive Committee
*DLA Piper*


Angela Agrusa is an experienced trial lawyer concentrating in reputational defense. She and her team have successfully defended corporations and celebrities against courtroom allegations in some of the most high-profile cases filed across the country.

Angela understands that reputational integrity is critical to a brand. As a trial attorney, she obtains winning verdicts and defeats cases in their nascent stages. In the last five years alone, she has successfully defended brand holders in over 50 putative class actions with combined potential exposure of more than US$100 billion. She often works with clients to find administrative or legislative solutions in addressing multi party and class litigation.

# DLA Piper Global Women's Leadership Summit

**Tammy Albarrán**
Vice President
Chief Deputy General Counsel
Deputy Corporate Secretary
*Uber*

Tammy Albarrán is Vice President, Chief Deputy General Counsel and Deputy Corporate Secretary at Uber. In this role, she manages Uber's regional teams worldwide, government and regulatory investigations team, and oversees CLO operations.

Ms. Albarrán received a Bachelor of Arts from the University of California at Berkeley and her Juris Doctor degree from Harvard Law School. Prior to joining Uber in 2018, Ms. Albarrán was a partner at an international law firm, where she conducted the investigation and co-authored the report with former US Attorney General Eric Holder that included concrete recommendations addressing workplace culture issues at Uber.

In her free time, you will find her exercising, walking her dog, or cheering for her three kids at various sporting events.

# DLA Piper Global Women's Leadership Summit

Elizabeth Lampert
President
*Elizabeth Lampert PR*

Elizabeth Lampert, President of ELPR, works with lawyers, law firms, and those in legal services industry to raise their profile and client base through public relations activities.

Ms. Lampert has lent her public relations and legal marketing acumen to some of the country's most profitable law firms and their business clients in a variety of practice areas, helping each to expand their client base and increase their public profiles in target markets.

Ms. Lampert is a sought-after crisis communications strategist, having worked on some of the country's most high profile incidents.

# DLA Piper Global Women's Leadership Summit

Ama Romaine
Global General Counsel of Real Estate Asset Management
*Blackstone*

Ama Romaine is the Global General Counsel of Real Estate Asset Management for Blackstone. Ms. Romaine is also involved in the implementation of various strategic initiatives across Real Estate's portfolio companies.

Before joining Blackstone, Ms. Romaine served as the General Counsel and Chief Compliance Officer at G6 Hospitality, the parent company for the Motel 6 and Studio 6 brands. Previously, Ms. Romaine was the General Counsel and Head of Risk Management at the Johns Hopkins University Applied Physics Lab and she held a number of positions with increasing responsibility in the hospitality industry, including as the Vice President and Senior Counsel for Brands at Hilton Worldwide.

Ms. Romaine received a BA (with honors) from York University and a JD, *cum laude* from Howard University School of Law. Ms. Romaine also serves as the Chair of the Initiative: Advancing the Blue & Black Partnership, a non-profit organization that she co-founded to foster healthy communities for all.

# DLA Piper Global Women's Leadership Summit

Effie D. Silva
Senior Vice President
General Counsel
Corporate Secretary
Chief Ethics
Compliance Officer
*Fresh Del Monte Produce Company*

Effie D. Silva has served as the Senior Vice President, General Counsel, Corporate Secretary and Chief Ethics and Compliance Officer since 2022. In this role, Effie leads the company's legal, ethics and compliance, risk management, food safety, government affairs, and corporate reporting functions. Effie D. Silva is an experienced public company leader who has a stellar track record advising the board of directors and senior management on a broad range of issues, including transactional, litigation, corporate governance, compliance, and DEI matters.

Previously, she had a successful tenure as the Ethics and Compliance Leader for Cargill, Inc., a $165 billion private global food and agriculture company. As the most senior compliance officer at Cargill's $50 billion Protein and Salt division, she advised the Board of Directors on major compliance matters and led a team that was responsible for identifying and mitigating risks and developing business-sensitive solutions to complex problems. Prior to joining Cargill, Ms. Silva was a Vice President and Associate General Counsel at Tyson Foods, Inc. (NYSE: TSN), a $40 billion public food company. Ms. Silva was responsible for all legal matters impacting Tyson's $10 billion Prepared Foods' business unit and the enterprise-wide Sustainability department.

In addition to her in-house experience at Fresh Del Monte, Cargill, and Tyson Foods, Ms. Silva brings 20 years of complex business law practice at prominent global law firms, where she regularly advised corporate leaders and Boards of Directors of multinational companies on corporate governance, regulatory compliance and investigations, M&A, complex business litigation and international arbitration matters.

Effie is bilingual and has global experience across LATAM, APAC, and EMEA. She is a Fellow of the Chartered Institute of International Arbitration (FCIArb) and a Qualified Arbitrator for the American Arbitration Association (AAA), Conflict Prevention Resolution (CPR), and Financial Industry Regulatory Authority (FINRA). She is also Board Certified in International Litigation and Arbitration with the Florida Bar and has extensive cross-border experience advising and strategizing multi-jurisdictional disputes across venues, both nationally and internationally.

Effie earned her Juris Doctor degree in Law from University of Florida Levin College of Law, where she currently serves on the Board of Directors, and a Bachelor of Arts degree in International Relations from Wellesley College.

DLA PIPER

## Common Examples of ESG Issues

### E ENVIRONMENTAL

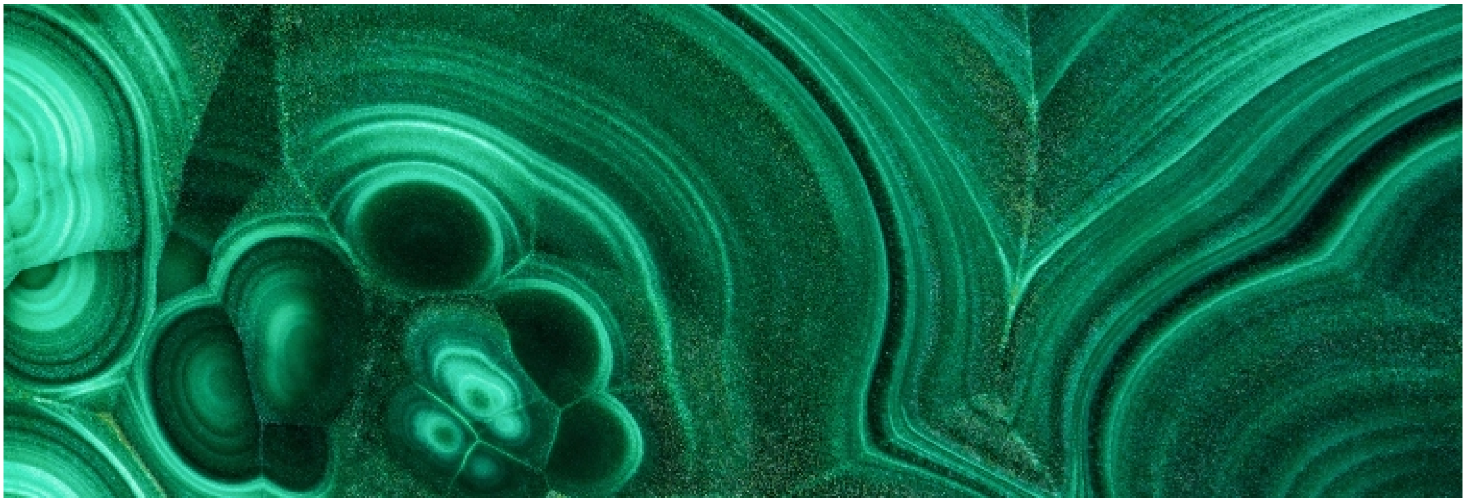
Climate change, greenhouse gas emissions (GHG), deforestation, biodiversity, pollution, water, waste, extended producer responsibility, etc.

### S SOCIAL

Customer relations, employee relations, labor, human rights, occupational health and safety, community relations, supply chains, etc.

### G GOVERNANCE

Board management practices, succession planning, compensation, diversity, equity and inclusion, regulatory compliance, corruption, fraud, data hygiene and security, etc.



# A look at the FTC’s Green Guides for US marketers of emissions reduction credits

Commodities Alert

18 May 2022

By: Deanna R. Reitman | Andrew Sacks

As the demand for emissions reductions credits grows, so does the secondary markets in emission reduction credits. Those who traditionally offer commodities in secondary commodities markets are increasingly stepping into the role of marketers for the purchase and sale of emission reduction credits in the secondary markets.

Notably, in these secondary markets for emission reduction credits – unlike traditional commodities markets – there is a greater possibility that emission reduction credits may end up in the hands of consumers.

One major aspect of a well-functioning, efficient and transparent secondary market in emission reduction credits is the transmission of truthful and reliable information. This is why it is important for emission reduction credit marketers to be aware of the FTC’s Green Guides.

The role of the FTC is to protect American consumers and business competition. Its Green Guides were created to help marketers avoid making environmental claims that mislead consumers. The Guides lay out the FTC’s enforcement approach for environmental claims, including claims involving emission reduction credits.

**A bit of background**

When the Wall Street Reform and Consumer Protection Act (popularly known as the Dodd-Frank Act) was enacted it

2010, it established an interagency working group made up of designees from the Commodities Futures Trading Commission (CFTC), the Secretary of Agriculture, the Secretary of Treasury, the Chairman of the Securities and Exchange Commission (SEC), the Administrator of the Environmental Protection Agency (EPA), the Chairman of the Federal Energy Regulatory Commission (FERC), the Administrator of the Energy Information Administration (EIA) and the Chairman of the FTC, and tasked them with studying the emissions reduction markets, to ensure they are efficient, secure and transparent.

The emissions reduction credits markets can be broken into a primary market and a secondary market. **The primary market** is where the emission reduction credit is introduced to the marketplace from either a government entity or registry. **The secondary market** occurs after the emission reduction credit is introduced to the market through the primary market; it allows market participants to trade emission reduction credit freely based on supply and demand.

**Requirements set out in the Green Guides**

Here are the most important requirements of the Green Guides as applied to emission reduction credit marketing:

- Emission reduction claims must be supported by "competent and reliable" scientific evidence, which the FTC defines as "evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." Typically, claims consistent with governmental and industry certifications will satisfy this standard, but those claims should be reviewed to ensure that they don't overstate or misrepresent those certifications.
- To the extent that any emission reduction credit marketing relies on accounting, that accounting must be based on appropriate, professional accounting methods.
- The marketer should not market benefits from the emission reduction if those reductions are otherwise required by law – in other words, the marketing materials cannot claim a beneficial result for such emissions reductions if that beneficial result would need to happen anyway, without the marketer's efforts.
- The marketer should make appropriate disclosures in its marketing of any material qualifications or limitations to the emission reduction claims. In particular, the marketer is to be sure to disclose whether the environmental benefits it claims may not be realized for two years or longer – the Green Guides specifically call out such claims as problematic if they lack clear disclosures.
- Also with respect to disclosures, note that the FTC requires disclosures in advertising to be "clear and conspicuous." If disclosures are made in a footnote or in small "mouse print" at the bottom of the page, the FTC may likely find that they are not sufficient to warn consumers about qualifications of the emission reduction claims. Often, it is preferable to include qualifying language in the body of the marketing materials, rather than in a fine print disclaimer, and with a bit of care these qualifications can be accomplished without diminishing the effectiveness of your advertising.

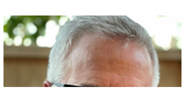
**Change is in the air**

Finally, marketers need to watch this space – the FTC has indicated that it will review and update the Green Guides this year. DLA Piper expects that these revisions will provide important additional guidance for emission reductions credit and environmental marketing, including the FTC's strategy to combat "greenwashing" – marketing and public relations activities that falsely portray a company or organization as environmentally friendly.

For additional information on this topic and other topics on the emission reductions markets, please email DLAPiperCommodities@dlapiper.com or any of the authors of this Commodities Alert.

## AUTHORS

**Deanna R. Reitman**
Of Counsel
Houston | T: +1 713 425 8400
New York | T: +1 212 335 4500
deanna.reitman@dlapiper.com



**Andrew Sacks**
Of Counsel

Seattle | T: +1 206 839 4800
andrew.sacks@dlapiper.com

Press Release

# SEC Charges Brazilian Mining Company with Misleading Investors about Safety Prior to Deadly Dam Collapse

## Since 2016, Vale manipulated safety audits and obtained fraudulent stability certificates

**FOR IMMEDIATE RELEASE**
**2022-72**

*Washington D.C., April 28, 2022* — The Securities and Exchange Commission today charged Vale S.A., a publicly traded Brazilian mining company and one of the world's largest iron ore producers, with making false and misleading claims about the safety of its dams prior to the January 2019 collapse of its Brumadinho dam. The collapse killed 270 people, caused immeasurable environmental and social harm, and led to a loss of more than $4 billion in Vale's market capitalization.

According to the SEC's complaint, beginning in 2016, Vale manipulated multiple dam safety audits; obtained numerous fraudulent stability certificates; and regularly misled local governments, communities, and investors about the safety of the Brumadinho dam through its environmental, social, and governance (ESG) disclosures. The SEC's complaint also alleges that, for years, Vale knew that the Brumadinho dam, which was built to contain potentially toxic byproducts from mining operations, did not meet internationally-recognized standards for dam safety. However, Vale's public Sustainability Reports and other public filings fraudulently assured investors that the company adhered to the "strictest international practices" in evaluating dam safety and that 100 percent of its dams were certified to be in stable condition.

"Many investors rely on ESG disclosures like those contained in Vale's annual Sustainability Reports and other public filings to make informed investment decisions," said Gurbir S. Grewal, Director of the SEC's Division of Enforcement. "By allegedly manipulating those disclosures, Vale compounded the social and environmental harm caused by the Brumadinho dam's tragic collapse and undermined investors' ability to evaluate the risks posed by Vale's securities."

"While allegedly concealing the environmental and economic risks posed by its dam, Vale misled investors and raised more than $1 billion in our debt markets while its securities actively traded on the NYSE," said Melissa Hodgman, Associate Director of the Commission's Division of Enforcement. "Today's filing shows that we will aggressively protect our markets from wrongdoers, no matter where they are in the world."

The SEC's complaint, filed in U.S. District Court for the Eastern District of New York, charges Vale with violating antifraud and reporting provisions of the federal securities laws and seeks injunctive relief, disgorgement plus prejudgment interest, and civil penalties.

The SEC's investigation was conducted by Sharan Custer and Lauren Poper, with the assistance of Carlos Costa-Rodrigues. The investigation was supervised by Mark Cave and overseen by Ms. Hodgman. The litigation will be led by Dean M. Conway and David Nasse under the supervision of Melissa Armstrong. The SEC appreciates the assistance of the Brazilian Federal Prosecution Service, Ministério Público do Estado de Minas Gerais, and Brazil's Comissão de Valores Mobiliários.

The SEC announced in March 2021 the formation of a Climate and ESG Task Force in the Division of Enforcement with a mandate to identify material gaps or misstatements in issuers' ESG disclosures, like the false and misleading claims made by Vale. More information about the Task Force can be found here.

###

## Related Materials

- SEC Complaint

# SEC proposes mandatory climate-related disclosure and governance rules

Corporate Governance Alert

21 March 2022

By: John J. Gilluly III | Brent L. Bernell | Brooke Goodlett | Alan Seem | Sanjay M. Shirodkar

Earlier today, at an open meeting, the Securities and Exchange Commission (SEC) proposed, by a 3-1 vote, rules to significantly expand and standardize registrants' climate-related disclosures for investors. The proposed rules would utilize mandatory, prescriptive disclosures in periodic reports and registration statements to address a myriad of topics related to greenhouse gas (GHG) emissions and global climate change. These proposed rules represent the SEC's latest effort to advance the climate agenda of the Biden Administration, which describes climate change as "a systemic risk to our economy and financial system."

The proposed rules would require registered domestic and foreign issuers to disclose:

- The registrant's oversight and governance of climate-related risks and risk management process
- The registrant's climate-related risks and their actual or likely material impacts on the registrant's business, strategy and outlook and on the registrant's financial statements over the short, medium and long terms
- The impact of climate-related events, such as severe weather events, and climate transition activities on the

registrant's audited consolidated financial statements at a line-item level, as well as the climate-related estimates and assumptions used in the financial statements
- The registrant's scope 1 (direct) and scope 2 (indirect from production of energy used in business) GHG emissions, with accelerated and large accelerated filers required to obtain, after phase-in periods, independent attestation, at a reasonable assurance level, of the accuracy of such emission disclosures
- If material, or if the registrant has adopted a GHG emissions target or goal that includes scope 3 GHG emissions, the registrant's indirect scope 3 GHG emissions from upstream and downstream activities in the registrant's value chain (the proposed rules include a safe harbor for liability in connection with disclosures regarding scope 3 GHG emissions and exempt smaller reporting companies from this requirement) and
- Details regarding any climate-related targets and goals, climate transition plans, scenario analysis, or internal carbon price used by the registrant in connection with its climate-related risk management, including data on the registrant's progress against publicly stated goals and on carbon offsets used as part of those plans.

The proposed rules would include a phase-in period with compliance dates dependent on the registrant's filer status as follows:

- **Large Accelerated Filers**:
    - Fiscal year 2023 (filed in 2024) for all proposed disclosures excluding scope 3 GHG emissions
    - Fiscal year 2024 (filed in 2025) for (i) scope 3 GHG emissions disclosures (if required) and (ii) limited assurance attestation of scope 1 and scope 2 GHG emissions disclosures and
    - Fiscal year 2026 (filed in 2027) for reasonable assurance attestation of scope 1 and scope 2 GHG emissions disclosures.
- **Accelerated and Non-Accelerated Filers**:
    - Fiscal year 2024 (filed in 2025) for all proposed disclosures excluding scope 3 GHG emissions
    - Fiscal year 2025 (filed in 2026) for (i) scope 3 GHG emissions disclosures (if required) and (ii) for accelerated filers only, limited assurance attestation of GHG emissions disclosures (non-accelerated filers would be exempt from the attestation requirements) and
    - For accelerated filers only, fiscal year 2027 (filed in 2028) for reasonable assurance attestation of GHG emissions disclosures.
- **Smaller Reporting Companies**:
    - Fiscal year 2025 (filed in 2026) for all proposed disclosures other than scope 3 GHG emissions disclosures (smaller reporting companies would be exempt from the requirements to provide scope 3 GHG emissions disclosures or independent attestation).

The comment period for the proposed rules will remain open for 30 days after publication in the Federal Register, or 60 days after the date of issuance and publication on sec.gov, whichever period is longer.

Learn more about the proposed SEC rulemaking by contacting any of the authors or your DLA Piper relationship partner.

For more information, please visit our Sustainability and Environmental Social Governance portal.

## AUTHORS

**John J. Gilluly III**
Austin | T: +1 512 457 7000
john.gilluly@dlapiper.com

**Brent L. Bernell**
Partner
Austin | T: +1 512 457 7000
brent.bernell@dlapiper.com

**Brooke Goodlett**
Of Counsel
Austin | T: +1 512 457 7000
brooke.goodlett@dlapiper.com

**Alan Seem**
Partner
Silicon Valley | T: +1 650 833 2000
alan.seem@dlapiper.com

**Sanjay M. Shirodkar**
Partner
Washington, DC | T: +1 202 799 4000
Baltimore (Mount Washington) | T: +1 410 580 3000
sanjay.shirodkar@dlapiper.com

# SEC proposes rules on climate-related disclosures and transitioning to a lower carbon economy: 8 steps to consider as you prepare

Sustainability and Environmental, Social and Governance Alert

5 May 2022

*"A company can reduce its GHG emissions in many ways. Many companies still have not considered how."*

Companies looking to understand and integrate environmental, social and governance (ESG) strategies in their operations must navigate dynamic regulations, voluntary but widely adopted reporting frameworks, and emerging technological solutions that make it possible for companies to measure, meet and report on ESG targets.

The SEC's proposed rules on climate-related disclosures are the latest regulatory push in the ever-changing world of ESG. The proposed rules would mandate and standardize a framework for disclosing climate-related risks, metrics, and data for public companies within the SEC's jurisdiction.

Many companies already disclose their climate-related ESG targets and performance under various third-party frameworks to satisfy investor demands. For instance, investors widely use the Task Force on Climate-related Financial Disclosures (TCFD) to incorporate climate risks into asset-allocation and portfolio-management decisions. Absent standardized climate-related disclosures, however, investors have difficulty comparing how companies perform in reducing greenhouse gas (GHG) emissions. The lack of standardization also impedes data management because each reporting framework uses its own surveys, questionnaires, and data points.

The SEC's proposed rules would standardize climate-related disclosure requirements based on the TCFD framework and the GHG Protocol. The proposed rules are open for public comment and will likely undergo some changes before becoming final.

As noted above, once it is finalized, this framework will be mandatory.

1. In this alert, we suggest several steps for companies to consider as they engage in critical discussions and planning to reduce and disclose their GHG emissions and targets. **Add a board member and/or Chief Sustainability Officer to the C-suite.** Companies should add to their management or executive team a position with sufficient authority and budget to (a) implement emission reduction programs (such as the purchase and retirement of emission reduction credits); (b) invest in emission reduction projects; and (c) make necessary operational changes to transition the company toward sustainable operations.

2. **Engage experts or develop partnerships to identify, track, and disclose** GHG emissions generated directly by the company's own operations  (the so-called Scope 1), indirect GHG emissions from purchased electricity or other forms of energy (Scope 2), and GHG emissions from upstream and downstream value-chain activities (Scope 3). Measuring a company's GHG emissions can be complicated, especially for growing enterprises. The issues are not purely technical. Companies must also develop policies and procedures for GHG accounting, measuring, and reporting.

3. **Rethink products and services**, developing new production processes to understand the carbon footprint of bringing these products and services to market and improving the quality of data for others in the value chain. A company can reduce its GHG emissions in many ways. Many companies still have not considered how. Consider dedicating a specific working group to understanding and addressing the company's carbon footprint and to making decisions around energy procurement, sustainability initiatives, internal carbon pricing, and target setting.

4. **Allocate budget and engage experts to map and address physical risks from climate change**, like sea-level rise and extreme weather events, that may threaten real-property assets, disrupt operations and supply chains, alter transportation needs, and affect workplace safety. For instance, assess whether and how the company's fixed assets and supply chains depend on carbon-intensive utilities or natural resources, identify related transition risks, and develop transition plans. The results of the risk assessment are then the basis for setting supply chain priorities, allocating budget, and implementing the necessary changes, programs, and procedures to minimize the business risks both to and from the transition process.

5. **Identify dedicated personnel and create internal operations** to collect, manage, and analyze climate related data, including data from physical facilities, supply chains, and customers.

6. **Allocate budget for record keeping, auditing, risk control and compliance to support transition solutions**, such as accurate and timely documentation for retiring emission reduction credits or renewable energy credits, and involving the legal department when structuring sustainability linked agreements with counterparties to avoid inadvertently violating derivative investment regulations.

7. **Find opportunities to collaborate** with governments, banks, and energy and ESG tech startups on products and services that enable transitioning to a lower carbon economy, such as by issuing green bonds and investing in sustainable infrastructure.

8. **Nurture long-term relationships with dedicated professionals**, both internal and external, who can help your company navigate through a complex and dynamic regulatory ecosystem and toward a lower carbon economy.

For more information about the subject of this Commodities Alert, please contact DLAPiperCommodities@dlapiper.com or the authors of this alert.

This is for general information only. The information presented is not legal advice, and your use of it does not create an attorney-client relationship. You should not act on the basis of any content included in this presenttion without seeking appropriate legal advice from counsel. DLA Piper expressly disclaims all liability in respect to actions taken based on any content in this presentation. All legal matters are unique and any prior results described in this presentation do not guarantee a similar outcome in future matters. DLA Piper is a global law firm operating through DLA Piper LLP (US) and affiliated entities. For further information, please refer to dlapiper.com. Attorney Advertising.