Articles + Publications | April 4, 2022

Locke Lord QuickStudy: Insurers Hit With Two Climate ?Disclosure Developments on Same Day

Locke Lord LLP

WRITTEN BY

Andrew D. Otis | Rob Evans | Brittany Batts

RELATED OFFICES

Dallas

Like two kids that show up to school wearing the same outfit, the SEC and the NAIC both proposed significant new climate reporting requirements on March 21, 2022. The SEC's new rule would, if adopted, require most public companies to report climate risk and greenhouse gas emissions. The NAIC proposed revisions to its climate risk disclosure survey ("NAIC Survey") that is now mandatory for insurers in 14 states and the District of Columbia, covering 80% of the insurance market in 2021 based on direct premiums written.

The SEC rules and revised NAIC Survey are both proposals and not yet mandatory. The SEC will take comment on their proposed rules until 30 days after publication in the Federal Register or May 20, 2022, whichever is later. The proposed changes to the NAIC Survey are subject to approval by the NAIC Executive and Plenary Committees. These committees will consider the proposals when they meet April 4-8, 2022.

Both sets of proposals are based on and consistent with the recommendations of the Task Force on Climate-Related Financial Disclosures ("TCFD"). Both the SEC and NAIC said that they chose the TCFD framework to provide a consistent and reliable structure for assessing, managing and reporting climate risk. The NAIC proposal completes the transition from the original NAIC closed ended survey to a more open ended reporting framework. For insurers that have been responding to the NAIC survey using a TCFD report, an option since reporting year 2020, there should be minimal changes in the reporting format.

If adopted, the new SEC rules, however, will require public insurance companies to report climate risks and greenhouse gas ("GHG") emissions in their SEC filings for the first time. Even for firms that have been tracking and reporting climate-related risk and GHG emissions, including that information in SEC filings will involve a new level of disclosure and related enforcement and litigation risk. For public insurance companies that have not been tracking and reporting climate risk and GHG emissions, a finalized SEC climate reporting rule will require a significant effort to assess climate risk and GHG emissions and develop a climate risk and GHG management system that includes appropriate board expertise and oversight and management processes.

The Proposed SEC Climate Disclosure Rules

Locke Lord has discussions of the proposed SEC rules in its Locke Lord QuickStudy: SEC Proposes Climate-Related Disclosure Rules – What You Need to Know.

©2026 Troutman Pepper Locke

Key aspects of the proposed rules for publicly traded insurance companies are those relating to disclosure of climate financial risk and management and Scope 3 GHG emissions in SEC filings, including:

- climate-related effects and risks and how they have or may have a material impact on the business in the short, medium, and long term;
- how the climate-related risks have affected or are likely to affect the company's strategy, business model, and outlook;
- processes for identifying, assessing, and managing climate-related events and associated plans for transition to a lower-carbon economy (including financial estimates and assumptions affected by climate events and transition activities); and
- board and management oversight of climate-related issues.

The rules categorize climate risk as both physical risk and transition risk. Physical risk is the type of risk that insurance companies have a special expertise in assessing and tracking: mortality and health impacts for elevated heat and physical and economic damage due to floods, storms or wildfires. Transition risk is the risk associated with transitioning to a lower carbon economy, such as regulatory, market or technological risk.

In addition, publicly traded insurance companies would be required to report:

- all Scope 1 and 2 GHG emissions, including:
    - both aggregated and disaggregated GHG emissions;
    - GHG emissions in absolute terms and based on emissions intensity or emissions per unit of activity;
- Scope 3 emissions, except for smaller reporting companies;
- climate-related targets and goals and the use of offsets or credits to achieve those targets and goals; and
- any use of an internal carbon price, how that price was derived, and expected changes to the price over time.

The rules would also require publicly traded insurance companies to disclose in their audited financial statements climate-related financial metrics, expenditure metrics and estimates and assumptions.

Once adopted, compliance with the rules would be phased in over time with Large Accelerated Filers[1] required to report climate risks and Scope 1 and 2 GHG emissions for fiscal year (FY) 2023, Accelerated and Non-Accelerated Filers[2] required to report those metrics in FY 2024, and Smaller Reporting Companies ("SRC")[3] reporting the same in FY 2025. Large Accelerated Filers would be required to report Scope 3 GHG emissions beginning in FY 2024, Accelerated and Non-Accelerated Filers in FY 2025. Smaller Reporting Companies would not be required to report Scope 3 GHG emissions.

The Revised NAIC Survey Using the TCFD Framework

The revised NAIC Survey is organized around the four TCFD focus areas:

- ***Governance***: Governance of climate-related risks and opportunities, including disclosing:
    - Publicly stated goals regarding climate risks and opportunities;
    - The level at which the insurer is making the climate disclosure, such as the group level or entity level. The survey encourages disclosure of activities at the entity level; and

- Board and management's role in identifying and managing climate-related risks and disclosures.

- ***Strategy:*** Actual and potential impacts of climate-related risks and opportunities on the insurer's business, strategy and financial planning, where material. This includes disclosing:

  - Efforts to engage key constituencies;
  - Plans to assess and reduce direct GHG emissions in its own operations (Scope 1 GHG emissions);
  - Identified climate risk and opportunities over the short, medium and long term. There are default durations for these terms in the survey[4] but insurers can change these terms with justification;
  - Products and investments to transition to a lower carbon economy;
  - Resiliency of strategy under different climate change scenarios, including a 2 degree Celsius or lower average temperature rise.

- ***Risk Management:*** How the insurer identifies, assesses and manages climate change related risk, including disclosing:

  - Management of physical, transition and liability risk in underwriting and investment portfolios;
  - Steps taken to encourage policy makers to manage insurer climate change risk;
  - The method used to assess and manage risk, including whether climate change risk is part of its enterprise risk assessment and management and its use of climate scenarios and timelines;

- ***Metrics and Targets:*** The metrics and targets the insurer uses to assess and manage collateralized risk, where material, including:

  - Disclosing Scope 1 and 2 and "if appropriate" Scope 3 GHG emissions;
  - Consider disclosing climate change risk by business line, geography, under various climate change scenarios and climate Value at Risk.

The NAIC proposal includes closed ended questions that State Insurance Commissions may choose to include to support the narrative response to the four TCFD focus areas.

If the revised survey is adopted by the full NAIC in April as expected, the first reporting year the new format will be required will be 2022 for existing responders. Reporting year 2022 survey responses would normally be due August 31, 2023 but the NAIC proposal includes a delay until November 30, 2023. The deadline would return to August 31 for the 2023 reporting year. Insurers that write more than $100 million in any of the 14 participating states and the District of Columbia[5] would be required to complete the survey.

Materiality

The SEC's proposed rules are consistent with current SEC materiality guidance and require the disclosure of climate-related risks that are reasonably likely to have a material impact on the reporting company, its business, or its consolidated financial statements over the short, medium, and long term. The proposed rules leave room for each company to determine materiality and define those time horizons as they relate to the company's particular business.

Like the SEC proposed rules, the revised NAIC survey states that "there is no requirement to provide information that is immaterial to an assessment of financial soundness." It requires insurers to justify their assessment of

©2026 Troutman Pepper Locke

materiality and references the definitions of materiality in the NAIC Financial Conditions Examiner's Handbook and U.S. Securities and Exchange Commission Staff Accounting Bulletin: No. 99. The NAIC Survey requires a materiality assessment with respect to the TCFD reporting areas of "Strategy" and "Metrics and Targets," excluding the Scope 1 and Scope 2 GHG emissions section. Disclosures related to the "Governance" and "Risk Management" reporting areas "do not involve an assessment of materiality" according to the NAIC, implying that insurers are expected to disclose information in those areas regardless of materiality.

Key Issue: Climate – Related Risk

Both the SEC proposed rules and the NAIC revised survey require extensive disclosure of an insurer's climate-related risk assessment and management. This is also consistent with the November 15, 2021 Guidance for New York Domestic Insurers on Managing the Financial Risk from Climate Change issued by the New York Department of Financial Services. The SEC proposed rules will subject insurer climate-related materiality and risk assessments and management systems to the additional scrutiny and potential legal liability associated with securities laws compliance and enforcement. To the extent that they have not yet done so, publicly traded insurers will need to (i) perform a robust assessment of the materiality of climate-related risks to their underwriting and investment portfolios and business strategy, (ii) develop a climate-related risk management scheme, including appropriate board expertise and oversight, for any climate-related risks that it determines are material and (iii) ensure that such risks and management schemes are appropriately and consistently characterized throughout all of its publicly available communications, including SEC filings, reports and its web site. Insurers will need to consider whether climate-related risks should be incorporated into their enterprise risk management system. Insurers should also be prepared to disclose the methods that they use to assess climate-related risk, including scenario analyses, percentage of its assets that are vulnerable to climate-related risk, and any price that it places on carbon.

Insurers will need to consider the implications of assessing and reporting both physical and transition climate-relate risk over the short, medium and long term. Both property and casualty and life insurers will be required to consider that the pace of climate-related change may be accelerating and past events or conditions may not be accurate predictors of the future. Likewise, transition risks may be difficult to predict as intervening events have material impacts on government climate-related policies in the short and medium terms, such as the impact of the war in Ukraine on the demand for, and government policies with regard to, the supply of natural gas in the short and medium term.

Insurers subject to both the SEC Rules and the NAIC Survey will need to ensure that their responses to each are consistent to avoid the impression that the insurer is "greenwashing" its environmental impact in its public filings – i.e., giving the impression that the insurer accounts for fewer GHG emissions or is less susceptible to climate risk than may be the case.

Key Issue: Scope 3 Emissions

Almost all public company insurers (except for SRCs) will be required to determine and disclose their Scope 3 GHG emissions. The SEC proposed rules refer to the Greenhouse Gas Protocol ("GHG Protocol") for guidance on emissions reporting. With its emphasis on assessing emissions from a company's value chain and purchase and production of goods and services in its Corporate Value Chain (Scope 3) Standard, the GHG Protocol seems

©2026 Troutman Pepper Locke

to be a better fit for manufacturers and industry than insurers. Standard 15 of the GHG Protocol's Scope 3 Calculation Guidance and its Climate Strategies and Metrics: Exploring Opportunities for Institutional Investors focus on methods for calculating Scope 3 GHG emissions from investing but provide less guidance on assessing Scope 3 GHG emission associated with other insurer activities, such as underwriting.

Insurers will need to grapple with how to quantify their Scope 3 GHG emissions arising both from their investment activities but also from their products and services – i.e., how should a business interruption insurance policy issued to an insured in the transportation sector count towards its Scope 3 GHG emissions. Given the relative novelty of this kind of issue, there is the risk that, at least initially, different approaches will propagate across the industry potentially increasing both regulatory risk and the risk of shareholder actions.

The TCFD Guidance on Metrics, Targets and Transition Plans recognizes the issues with data gathering by financial institutions, including insurers, necessary to disclose Scope 3 GHG emissions and encourages them to seek GHG emissions data from the emitters to whom they provide financial services. Ultimately, insurers required to report under any SEC final rule will be required to develop not only metrics for Scope 3 GHG emissions but a measurement of Scope 3 GHG emissions intensity by comparing emissions to a metric of activity, such as dollars of premium written or dollars invested.

Conclusion

Regulators at the state and national level are pushing insurers to assess, manage and report climate-related risks and GHG emissions. Publicly traded insurers and insurers in one of the fifteen states now requiring responses to the NAIC Survey will need to ensure that their tracking, management and reporting systems are consistent with any final rules. Those that have not yet developed a program to assess, manage and report climate-related risks and Scope 1, 2 and in most cases 3 GHG emissions are well advised to do so in 2022 to prepare for likely reporting requirements in 2023 and 2024.

Insurers will also need to closely monitor any emerging industry practices with respect to the reporting of GHG emissions and climate risks in their filings. We will be observing insurers' reporting practices and the reactions of regulators and shareholders to the same, and would be happy to consult on any of these issues.

---

[1] A company that (1) has reported with the SEC for one year; (2) has a public float of $700 million or more and (3) does not meet the SRC revenue test (described below in note 3).

[2] (1) has reported with the SEC for one year; (2) has a public float of not less than $75 million to less than $700 million and (3) does not meet the SRC revenue test.

[3] A company that has a (1) public (non-affiliate) float of less than $250 million or (2) public float of less than $700 million and less than $100 million in annual revenue (the "SRC revenue test").

[4] The survey defines short term as 1-5 years, medium term as 5-10 years and long term as 10-30 years.

[5] California, Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington

RELATED INDUSTRIES + PRACTICES

- Bad Faith
- Environmental + Natural Resources
- Environmental, Social + Governance (ESG)

©2026 Troutman Pepper Locke

- Insurance + Reinsurance
- Insurance Transactional + Regulatory
- Reinsurance