MEMORANDUM

TO: File No. S7-10-22

FROM: Jill S. Henderson, Senior Counsel
Division of Economic and Risk Analysis

RE: Meeting with Joseph Grundfest and Devon Wilson

DATE: June 28, 2023

On June 20, 2023, staff from the Division of Economic and Risk Analysis (DERA) and the Division of Corporation Finance (CF) met with Joseph Grundfest, Stanford Law School Professor of Law and Business, and Devon Wilson, Stanford Law School. Attendees from the SEC included Oliver Richard, Cindy Alexander, Jill Henderson, and Ruoke Yang (DERA) and Valian Afshar, Kristin Baldwin, Elliot Staffin, and Nicholas Walters (CF). Also, on May 24, 2003, Ruoke Yang (DERA) met with Dr. Grundfest and Mr. Wilson. The general topic discussed at the meetings was the Commission's proposal on The Enhancement and Standardization of Climate-Related Disclosures for Investors.

Attachment:

- Presentation by Devon S. Wilson

Domestic & International Greenhouse Gas Emission Disclosure Regimes

A Preliminary Comparative Analysis

Devon S. Wilson
Stanford Law School
Class of 2023
May 7,2023

Summary

1. Major greenhouse gas (GHG) emitters doing business in the US and EU will soon be subject to mandatory emission disclosure requirements, unrelated to SEC proposals, that will force expansive scope 1, 2, and 3 disclosures, without materiality qualifications and with verification obligations.
2. The reach of EU and US Federal Acquisition Regulations (FARs) are particularly broad and are not yet fully appreciated by the reporting and environmental communities.
3. Other significant reporting obligations arise from US EPA requirements, pending California and NY State legislation, and UK and Japanese requirements.
4. Major emitters will disclose more information under these regimes than is required by even the most expansive interpretation of the SEC's climate disclosure proposals.
5. Smaller emitters, whether publicly traded or privately held, are the only non-governmental entities in the US and Europe based entities likely to avoid emission disclosure requirements. Government-owned emitters are generally exempt except under US GHGRP.
6. Major gap in emission disclosures will then persist among emerging markets and geographies that do not require robust, validated GHG disclosure

Policy Implications

1. These expansive GHG reports will be inconsistent in format and in their definitions of reporting obligations, most notably with respect to Scope 3.
2. Investors will incur substantial costs in analyzing these data and in developing consistent measures of global emissions that avoid double-counting.
3. The SEC's optimal role could be as an information aggregator that collects GHG disclosures at a single site that reduces investor information costs and enhances market efficiency.[1]
4. This approach also dramatically reduces compliance costs for all SEC reporting entities and has a cost-benefit profile far superior to the Commission's current proposals.
5. Very significant reporting gaps will persist with respect to emitters exempt from EU, US, UK, and Japanese reporting obligations. Additional disclosure efforts are best directed at these governments and geographies.

[1] Joseph A Grundfest, *Comment Letter on the Enhancement and Standardization of Climate-Related Disclosures for Investors* (June 15, 2022),

Status of Major US-Based Emission Disclosure Regimes

SEC Climate Rule	Public Comment Period Closed (Nov 1, 2022) Final Rule Expected Fall 2023
US Federal Acquisition Regulation (FAR)	Public Comment Period Closed (Jan 13, 2023)
New York State Climate Corporate Accountability Act (NY CCAA)	Referred to Environmental Conservation Committee (Jan 9, 2023)
California Climate Corporate Data Accountability Act (CA CCDAA)	Placed on Appropriations suspense file (May 01, 2023)
EPA Greenhouse Gas Reporting Program	Effective January 1, 2010

Status of Major Non-US Emission Disclosure Regimes (Europe and Canada)

EU Corporate Sustainability Reporting Directive (CSRD)	Approved by EU Parliament and Council (Nov 11, 2022)
UK Streamlined Energy & Carbon Reporting (SECR)	Rules are in effect (April 1, 2019)
Canada Standard on the Disclosure of Greenhouse Gas Emissions and the Setting of Reduction Targets	Effective April 2023
Canada Climate Risk Management Guidelines	Enacted March 2023, Effective for Fiscal Year 2024

Status of Major Non-US Emission Disclosure Regimes (Asia)

China Measures for the Administration of Disclosure of Environmental Information	Disclosure rules are in effect (Feb 8, 2022)
Japan Financial Services Agency Sustainability Disclosure Rules	Effective for reporting financial years that end on or after March 31, 2023.
Hong Kong Stock Exchange Enhancement of Climate-related Disclosures Under the Environmental, Social, and Governance Framework	Consultation Paper Published April 2023, Effective Date 1 January 2024
Singapore Exchange Climate and Board Diversity Disclosures	Published December 2021, Effective January 2022
India Securities and Exchange Board Business Responsibility and Sustainability Reporting	Introduced May 2021, Mandatory FY 2022-2023

Supporting Materials (1)

1. Proposed EU Corporate Sustainability Reporting Directive
2. Proposed Federal Acquisition Regulations
3. Existing EPA GHG Reporting Program
4. Proposed SEC Climate Disclosure Rules
5. Proposed California and New York State Legislation
6. Existing UK Streamlined Energy and Carbon Reporting
7. Existing Japan Financial Services Agency Sustainable Disclosure Rule
8. Existing China Measures for the Administration of Disclosure of Environmental Information

Supporting Materials (2)

1. Scope 1, 2, and 3 definitions across regulatory frameworks
2. Different activities considered as Scope 3 emissions
3. Scope 3 reporting requirements
4. Differences in assurance obligations
5. Differences in enforcement mechanisms

Proposed EU Corporate Sustainability Reporting Directive

Covered Entities	1) all **large companies incorporated in an EU member state**, including EU subsidiaries of non-EU companies that meets two of the following three criteria: (a) a net turnover of more than €40 million; (b) balance sheet total assets greater than €20 million; and/or (c) more than 250 employees; 2) **parent companies incorporated in an EU member state**, where the group of companies collectively meet the large company criteria; 3) certain **non-EU incorporated companies** 4) **companies listed on an EU-regulated market**, including small and medium-sized companies (SMEs)
Reporting Requirements	Scope 1, 2 and 3 Emissions
Validation	Companies will be required to obtain third-party assurance over their CSRD disclosures. Initially, companies will be required to obtain only "limited" assurance. By 2028, however, the European Commission plans to adopt standards for reasonable assurance analogous to the standard currently required for financial statements. Once the Commission has adopted reasonable assurance standards, companies will be required to obtain an assurance opinion to that higher standard.

Proposed Federal Acquisition Regulation

Covered Entities	**"Major Contractors"** that received at least $50 million in federal contract obligations million or more in federal contract obligations in the fiscal year as a mandatory element of a FAR Part 9 responsibility determination. **"Significant Contractors"** that receive at least $7.5 million but less than $50 million to annually disclose scope 1 and scope 2 emissions. According to the government's analysis 4,413 entities would qualify as significant contractors, of which 2,835 (or 64%) are small businesses, and another 1,353 entities would qualify as major contractors, of which 389 (29%) are small businesses.
Reporting Requirements	Major Contractors: Scope 1, 2, and 3 emissions. Significant Contractors: Scope 1 and 2 emissions
Validation	The entity responsible for overseeing the corporate emissions reporting, CDP, does not differentiate between limited and reasonable assurance within the CDP scoring methodology.CDP accepts different verification standards and those can use different terminology in relation to levels of assurance.

Existing EPA Greenhouse Gas Reporting Program

Covered Entities	Facilities or Suppliers are generally expected to report if: · GHG emissions from covered sources exceed 25,000 metric tons CO2e per year; or · Supply of certain products would result in over 25,000 metric tons CO2e of GHG emissions if those products were released, combusted, or oxidized.[1] More than 8,100 industrial facilities representing ~3,250 companies & 85% of US emissions
Reporting Requirements	Emissions from 1) stationary fuel combustion sources, 2) petroleum & natural gas systems, or Emissions associated with supplies of 1) petroleum products and 2) supplies of natural gas & natural gas liquids and to natural gas distribution companies that deliver 460,000 Mscf or more of natural gas per year.
Validation	EPA verifies the accuracy of the data.

Proposed SEC Climate Disclosure Rule

Covered Entities	Large Accelerated Filers, Accelerated Filers, & Non-Accelerated Filers, and Smaller Reporting Companies.
Reporting Requirements	Scope 1 and 2 emissions. Scope 3 emissions if material or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions/
Validation	Registrants would need to meet Limited Assurance requirements for fiscal year 2024 (filed in 2025) and Reasonable Assurance standards for fiscal year 2026 (filed in 2027)

Proposed California & New York State Legislation

Covered Entities	**California: Public and private US-based companies** that do business in California with annual revenues over $1 billion - Estimated 5,400 companies **New York: Business entities** with total revenues in excess of $1B in the preceding calendar year, including revenues received by all the business entity's subsidiaries that does business in New York.
Reporting Requirements	Scope 1, 2, and 3
Validation	Disclosures must be 'independently verified' by a state agency (like CARB) or a third-party approved by the agency.

Existing UK Streamlined Energy and Carbon Reporting Rule

Covered Entities	All public companies as well as private companies and nonprofits that have two or more of the following: a) 250+ employees b) £36+ annual turnover c) £18m+ balance sheet
Reporting Requirements	Scope 1 and 2 emissions required. Scope 3 emissions mandatory for large unquoted companies and LLPs to disclose related emissions from business travel in rental cars or employee-owned vehicles where they are responsible for repurchasing fuel. Other scope 3 emissions are voluntary, but strongly encouraged.
Validation	No statutory requirement to have environmental information audited. The statuory auditor of the financial statements is not required to audit environmental information in the Strategic or Directors' Reports within the annual report, but an auditor will be required to 1) consider whether the information is materially inconsistent with the financial statements, or the auditor's knowledge obtained in the audit 2) consider whether the information has been prepared in accordance with applicable legal requirements; and 3) report on these matters in the auditor's report.

Existing Japan Financial Services Agency Sustainable Disclosure Rule

Covered Entities	Reporting companies are subject to the new rules. A company becomes a reporting company once it conducts public offering of securities, whether equity or debt.
Reporting Requirements	The “Disclosure of Sustainability Information”, the attachment of the Principles of Disclosure of Descriptive Information, states that Scope 1 and Scope 2 are not the matters which must be disclosed but matters which are especially desirable to be actively disclosed as information which are helpful for constructive dialogues with investors.
Validation	Third party verification is not required.

Existing China Measures for the Administration of Disclosure of Environmental Information Rule

Covered Entities	**The new rules apply primarily to firms that produce significant environmental impact or pose a public concern.** Examples include i)Key Sewage Units; ii) Enterprises that are subject to Mandatory Clean Production Audits; iii) Listed or bond issuing companies that have violated environmental laws in the previous year
Reporting Requirements	Disclosing entities are responsible for reporting "Carbon emission information, including information on emissions, emission facilities, etc"
Validation	Local departments of ecology and environment are responsible for supervision and inspection of enterprises' environmental information and disclosure activities. They are encouraged to use technical means such as "big data analysis and artificial intelligence to carry out supervision and inspection" Also includes a whistleblower provision for citizens, legal persons, or other organizations to report to the local departments if they find that covered enterprises have violated any provisions

Scope 1 Definitions

US FAR	Includes GHG emissions from sources that are owned or controlled by the reporting company.
CA + NY	All direct greenhouse gas emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including but not limited to, fuel combustion activities
UK SECR	include[s] emissions from activities owned or controlled by the reporting organisation that release emissions into the atmosphere. Examples of Scope 1 emissions include emissions from combustion in owned or controlled boilers, furnaces, vehicles; emissions from chemical production in owned or controlled process equipment Other examples include Fuel use from transport (where the journey begins or ends in the UK) and combustion of natural gas

Scope 2 Definitions

US FAR	Includes GHG emissions from sources that are owned or controlled by the reporting company.
CA + NY	Indirect greenhouse gas emissions from electricity purchased and used by a reporting entity, regardless of location.
EU CSRD	Indirect GHG emissions are a consequence of the operations of the undertaking but occur at sources owned or controlled by another company. Scope 2 GHG emissions are indirect emissions from the generation of purchased or acquired electricity, steam, heat, or cooling consumed by the undertaking.

Scope 3 Definitions: A sample

US FAR	Emissions that are a consequence of the operations of the reporting entity but occur at sources other than those owned or controlled by the entity.
CA + NY	Indirect greenhouse gas emissions, other than scope two emissions, from activities of a reporting entity that stem from sources that the reporting entity does not own or directly true and may include, but are not limited to, emissions associated with the reporting entity's supply chain, business travel, employee commutes, procurement, waste, and water usage, regardless of location.
EU CSRD	All indirect emissions (not included in scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions.

US, EU, & UK: What activities fall within scope 3?

US SEC	Emissions attributable to goods and services that the registrant acquires, the transportation of goods (for example, to the registrant), and employee business travel and commuting. Downstream emissions include the use of the registrant's products, transportation of products (for example, to the registrant's customers), end of life treatment of sold products, and investments made by the registrant.
EU CSRD	Scope 3 GHG emissions are all indirect emissions (not included in scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions. (GHG Protocol, "A corporate accounting and reporting standard", Glossary, 2004)
UK SECR	Emissions from business travel in rental cars or employee-owned vehicles where they are waste disposal which is not owned or controlled, or purchased materials responsible for purchasing the fuel. Other scope 3 emissions are voluntary but strongly encouraged, where it is a material source of emissions

US, EU, & UK: Who is required to report scope 3

US SEC Climate Rule	Large Accelerated Filers, Accelerated Filers and Non-Accelerated Filers will be required to report scope 3 emissions when material or or if the registrant has set a GHG emissions target or goal that includes Scope 3
EU CSRD	1) all large companies incorporated in an EU member state, 2) parent companies incorporated in an EU member state, 3) certain non-EU incorporated companies 4) companies listed on an EU-regulated market, including small and medium-sized companies (SMEs)
UK SECR	Scope 3 emissions mandatory for large unquoted companies and LLPs to disclose related emissions from business travel in rental cars or employee-owned vehicles where they are responsible for repurchasing fuel. Other scope 3 emissions are voluntary, but strongly encouraged. All public companies as well as private companies and nonprofits that have two or more of the following: a) 250+ employees b) £36+ annual turnover c) £18m+ balance sheet are 'strongly encouraged' to report Scope 3 emissions.

Examples of Assurance Obligations

Regulation	Limited	Reasonable	Other
SEC Climate Rule	FY 2024	FY 2026	Registrants would need to meet Limited Assurance requirements for fiscal year 2024 (filed in 2025) and Reasonable Assurance standards for fiscal year 2026 (filed in 2027)
EU CSRD	2025	2028	By 1 October 2026, legislation must be adopted by the Commission relevant to 'limited assurance' engagements, and in relation to more onerous 'reasonable assurance' engagements by 1 October 2028. From 2025, an independent third party must provide limited assurance
UK	None	None	No Statutory Requirement
NY + CA			Public disclosures will be 'independently verified' by a state agency (like CARB) or a third-party approved by the agency.

US, EU, & UK: What are the assurance obligations?

US SEC Climate Rule	Registrants would need to meet Limited Assurance requirements for fiscal year 2024 (filed in 2025) and Reasonable Assurance standards for fiscal year 2026 (filed in 2027)
EU CSRD	By 1 October 2026, legislation must be adopted by the Commission relevant to 'limited assurance' engagements, and in relation to more onerous 'reasonable assurance' engagements by 1 October 2028. From 2025, an independent third party must provide limited assurance
UK SECR	There is no statutory requirement to have environmental information audited. The statuory auditor of the financial statements is not required to audit environmental information in the Strategic or Directors' Reports within the annual report, but an auditor will be required to 1) consider whether the information is materially inconsistent with the financial statements, or the auditor's knowledge obtained in the audit 2) consider whether the information has been prepared in accordance with applicable legal requirements; and 3) report on these matters in the auditor's report.

US, EU, and UK: Potential liability & enforcement

US SEC Climate Rule	The SEC's rule provides a safe harbor from liability for Scope 3 emissions disclosure, there is also forward looking statement safe harbors pursuant to the Private Securities Litigation Reform Act
EU CSRD	Individual member states will have 18 months to phase-in core CSRD criteria into laws. Specific EU countries will set their own enforcement and penalty rules under the CSRD.
UK SECR	CEOs and CFOs must review all financial reports and that the reports are "fairly presented" and don't contain misrepresentations. Companies are liable to a civil penalty in accordance with section 453 of the Companies Act of 2006. Section 453 states that companies are liable to a civil penalty when they fail to meet their duties under section 441.