

FiscalNote ESG Solutions

The Who, What, & Why of Public Comments on SEC's Proposed Climate-Related Disclosures





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Introduction

The much-anticipated climate disclosure proposal from the Securities and Exchange Commission (SEC) was released on March 21, 2022. The SEC's detailed 534-page proposal on climate-related disclosures has significant implications for companies in the U.S.

For starters, it seeks to mandate that publicly traded companies track and report on greenhouse gas (GHG) emissions from their own operations as well as from the energy they consume and to obtain independent certification of their estimates. But the proposal also shares guidelines on a range of climate-related efforts and initiatives.

"Once this proposal has been adopted, it wouldn't be far-fetched to say that the new climate-disclosure rules can fundamentally change how businesses operate," says Frank Meehan, General Manager, FiscalNote ESG Solutions.

Given its far-reaching implications, FiscalNote ESG analysts and advisors sought to understand how the country is responding to the proposal by analyzing the public comments submitted to the SEC. Our data science team produced this report to glean the top insights.



4,072

Readable
Comments

75

Unreadable
Comments

4,147

Total
Comments

Methodology

FiscalNote ESG's data science team downloaded 4,147 comments from the SEC's comment page for File No. S7-10-22 submitted between March 18 and July 21, 2022, of which it processed 4,072 for analysis. Out of those, the team discarded 75 comments from this analysis, as they were deemed unreadable. These included duplicate comments, some without text or PDF problems, and some with references to attached files that were not included on the SEC's page.

The date field given by the SEC was extracted and used for this report. Note, the date the SEC received the comment and when it was actually written may not coincide. The dates were scraped from the SEC website and not from the documents themselves. There may be cases where the SEC data does not match the letter date, but we use the SEC's data in this report.

Comments by
Author Type

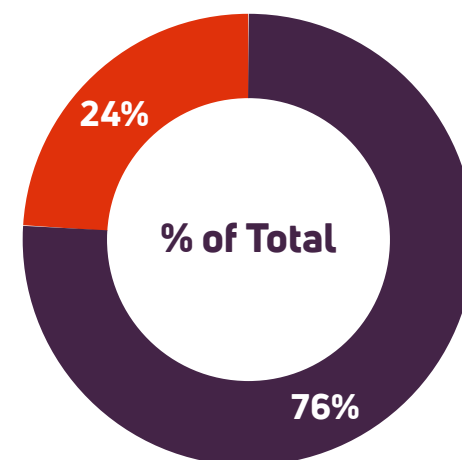


Comments by Author Type

FiscalNote's ESG data science team separated the comments into two groups based on author type: individuals and organizations. A majority were classified as individual commenters, which come from people speaking for themselves, not representing a larger organization.

Organizational comments were identified as those from commenters claiming to represent an organization in an official capacity. However, although legally a corporation, small businesses that are sole proprietorships are considered individuals for the purpose of this analysis.

	Raw Count	
Individual Comments	3,161	●
Organizational Comments	986	●



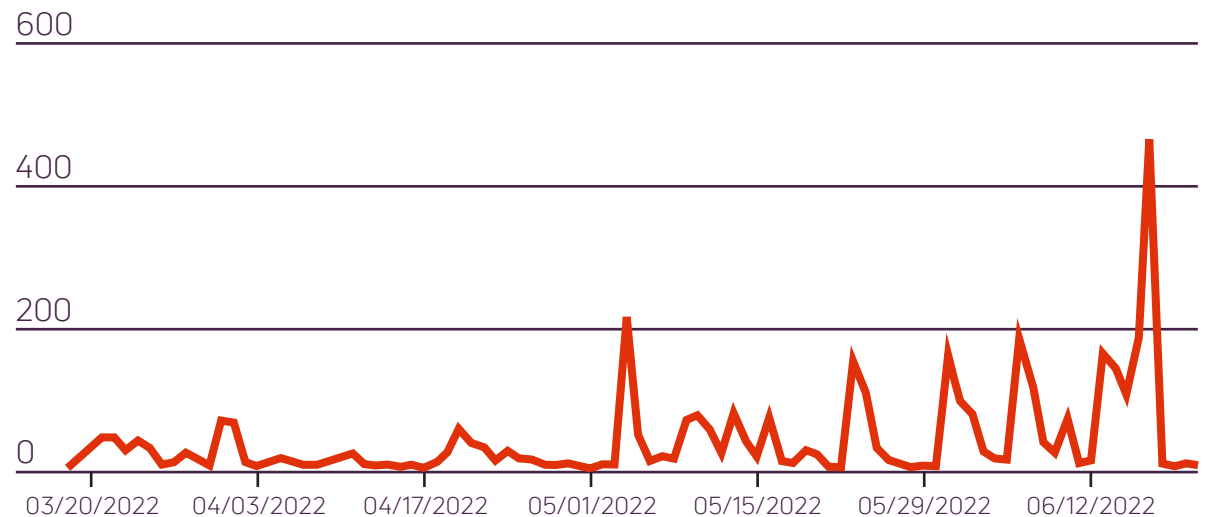


Comments by
Date



Comments by Date

The SEC comment deadline was originally May 20 but was extended to June 17, 2022. The most noticeable spikes were on May 4, with 222 comments received that day, and June 17, with 621 comments. These spikes could be attributed to mass mailing campaigns from advocacy organizations mobilizing their supporters either for or against the proposed rule.





Comments by
Stance



Comments by Stance

Most individual comments were straightforward and explicitly supported or opposed the proposed rule. Organizational commenters, however, are generally more nuanced, seeking modifications or exemptions; some were “generally” supportive but opposed to a particular section, etc. Thus, bucketing organizational comments was not as clear-cut.

Organizational Comments Examples

- “While SIFMA is supportive of the goal of increased disclosure of material climate-related information, SIFMA believes the proposed rules can be better tailored...”
- “Keidanren is pleased with the SEC’s proposed Rules related to the following points: 1) They were developed based on the TCFD recommendations; 2) They take into consideration the disclosure of corporate business models; and 3) They do not require industry-based disclosures in order to reduce the burden on registrants. On the other hand, in order to ensure the effectiveness of disclosures according to the Rules, it is critical that the SEC define the disclosure requirements by fully considering the embedding of disclosure practices into the registrants’ business environment.”
- “We support the SEC’s required disclosures of Scope 1 and Scope 2 emissions data, which we agree is information that is financially material and useful to investor decision-making. To the contrary, we have concerns about the SEC requiring prescriptive disclosures of information that is immaterial or evolving, such as Scope 3 emissions data, the excessive board governance disclosures, and reporting financial metrics on transition risks.”










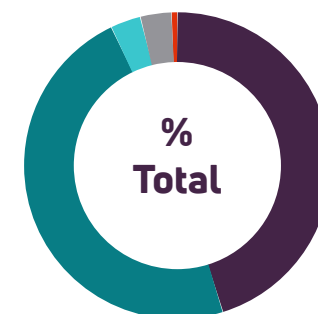
Comments by
Stance



Stance Definitions

- **Support:** Comments that expressed clear support for the proposal as a whole, or support for most of the changes. Comments expressing that the rule did not go far enough are generally still supportive of the rule and are classified here.
- **Oppose:** The comment contained an explicit statement that the commenter was opposed to the proposed rule.
- **Undetermined:** Does not mean that the comment did not express a position, per se; it may have been the PDF was unreadable or the points being made were too nuanced.
- **Modification Request:** Comments that purportedly supported the proposed rule but said a few modifications would make it better.
- **Request for Extension:** Comments whose only purpose was to officially ask for an extension.

	Individual	Organizational	Total	
Support	1,428	445	1,873	
Oppose	1,661	318	1,979	
Undetermined	56	75	129	
Modification Request	14	124	138	
Request for Extension	2	18	20	





Sentiment
Analysis



Sentiment Analysis

While running a sentiment analysis of the comments, distinct themes emerged, which provide a window into the more common rationale the commenters described toward their support or opposition to the proposed rule. They are not comprehensive and are merely an overview.

Overreach

These comments expressed doubt as to whether the SEC had the authority to enact this rule. One recurring theme was the belief that environmental issues are best left to the EPA, and the SEC's bailiwick exclusively regards securities. Others posited that this is a regulatory power grab and that no agency has the authority to make these mandates, only legislative action can do so.

Examples:

- "The SEC says in its mission statement their goal is to protect investors from financial fraud, not the climate. It's not their job nor do they have the Congressional authority to do so."
- "The SEC is charged with fighting investor fraud. It has no authority over climate policies and does not have the scientific expertise to make such policies."
- "While climate issues are an important cause, it is neither the role of, nor within the expertise of, the sec to fight climate-change through rulemaking."
- "This proposal mandates disclosures that would not qualify as material under federal securities laws. The proposal therefore exceeds the statutory authority granted to the commission and is both arbitrary and capricious, and not authorized by law."





Sentiment
Analysis



Burden

There were many examples of the commenters stating the proposed rule would cause hardship. The main classifications therein were administrative and economic burdens:

- **Administrative:** Additional paperwork the rule would impose.
- **Economic:** Largely referencing the cost of compliance for small businesses, or the cost that corporations, in general, would pass on to consumers who could ill afford it in today's economy.

Examples:

- "I think this proposal should be limited to companies with 500 or more employees as the cost and effort for small companies to compile this data would have a noticeable negative impact on a small company's earnings including additional year end audit fees."
- "The compliance costs would be unmanageable and un-affordable by most companies."
- "If anything it will hurt investors because of the inevitable massive costs companies will incur to comply which by extension will lower stock prices. "
- "It seems to me this S7-10-22 Climate proposal will burden industries (particularly small industries) with costly analysis, audits and probable litigation without good cause."





Sentiment
Analysis



Technically Infeasible

Although the ruling itself contained voluminous information, the ability of corporations to actually perform the disclosures mandated by the SEC was brought into question. Some argued that much more guidance was needed, while others flatly stated the request was impossible to achieve.

Examples:

- “Do companies have to disclose the risks of an asteroid hitting the earth? How about the risks of an earthquake in a particular region? Many things are unknowable and the ‘science’ behind environmental changes is still debatable.”
- “Who is actually going to figure the data? Everyone will have different standards, use different measures and different calculations. It will be so complex that who is going to know if it is really meaningful or not?”
- “Requirements to report Scope 3 emissions are quite problematic. Emissions associated with the use of an electronic device or electrical appliance by downstream consumers are going to be very dependent upon the source of electricity, which may vary depending upon the time of day. These emissions are completely out of the regulated entity’s control.”
- “The scope 3 emissions are also stated to include employee commuting. But, companies do not control where their employees live, how they travel to work, or by what modes of transport. These are largely personal choices of their employees.”





Sentiment
Analysis



Attempts to Overcome Technical Issues

Other commenters might have read previous postings before writing their own or perhaps were anticipating this line of questioning and responded preemptively.

Examples:

- "I support tracking the source of greenhouse gases. As a farmer, I already track all the fuel I consume in the production of crops. I provide that information to the IRS. I don't think it a significant inconvenience to pass this information on to another organization within the government to help get a handle on this crises we created."
- "With the advancement of technology, Enterprise Resource Planning (ERPs), and Product Lifecycle Management (PLM) there is no reason why any company cannot track these values with both accuracy and precision."
- "The challenge is connecting the annual cost spent on fuel to gallons consumed. For gross approximations, one could do this by analyzing typical fuel costs during max consumption periods at the zip code provided."
- "The Global Reporting Initiative (GRI) databases are just one example of these practices being adopted on a wide scale. Researchers have found that mandated reporting such as this has had a positive effect on the environmental conciseness of companies as there is a higher pressure to make a positive impact with these environmental and social components of their business."





Sentiment
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Not Far Enough

Many supporters of the rule were not shy in expressing that the rule, while a good first step, could be made much stronger. Others wanted less of a phased-in approach and to see the rule enforced in a faster time frame.

Examples:

- “It is vital that the federal government regulates not only disclosures on climate-related risk but also disclosures on climate impact.”
- “Given that a traded company’s partners could be bigger polluters than the public company itself, I believe that the traded company should be required to report on greenhouse gas emissions by its partners. At the least, these annual reports should include such disclosures as they relate to the public company’s largest partners.”
- “I strongly encourage the SEC to strengthen the final rule by requiring Scope 3 GHG emissions (e.g., product and supply chain emissions) disclosure from all large registrants, and to include disclosures around environmental justice, Indigenous rights, a just transition for dislocated workers, and community-level impacts.”
- “In addition to GHG emissions, Calvert supports the disclosure of associated activity level data (e.g. tons of aluminum, tons of cement product) to ascertain if companies are becoming more carbon efficient per unit of good/service over time.”





Sentiment
Analysis



Changes Should Take Effect Sooner

Some supported the proposed rule but suggested an accelerated timeline.

Examples:

- "At a minimum, the existing draft scope 3 disclosure requirements could be phased in one year earlier than under the proposed schedule, and earlier or broader adoption could be encouraged by other means as well."
- "I urge the commission to promptly adopt its proposal, along with a rigorous implementation timeframe."
- "The SEC should move quickly to strengthen this framework and finalize, implement and enforce detailed disclosure requirements for public companies."





Sentiment
Analysis



Comparability Across Jurisdictions

While supportive of the SEC's initiative, several companies simultaneously exist in different jurisdictions and asked the Commission to work with Canada or the EU to establish rules that would be consistent across jurisdictions.

Examples:

- "Other jurisdictions such as the European Union are developing requirements that are designed to meet the demands of other stakeholders than investors for sustainability-related information."
- "As noted, ACCA supports the global baseline and building block approach which envisages that there may be extra requirements specific to a jurisdiction and these would inevitably make mutual recognition difficult."
- "We urge the SEC to permit Multijurisdictional Disclosure System (MJDS) issuers to comply only with forthcoming Canadian climate-related disclosure requirements, and to make any compliance with SEC rules strictly voluntary for MJDS filers."
- "We would, however, stress the need for consistency amongst international frameworks to avoid confusion in the market."





Sentiment
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Hold Businesses Accountable

Other commenters praised the proposed rule as a positive step toward holding businesses accountable and better informing investors on how their money is being used.

Examples:

- “The requirements related to Scope 3 reporting seem to be, understandably, the most controversial aspect of these proposed regulations. Nevertheless, they are the most important, as many companies are able to ‘hide’ significant amounts of GHG-emitting activity by outsourcing these activities to third parties.”
- “As investors, we have a right to know how our money is directly impacting the health and well-being of both humans and ecosystems we inhabit.”
- “Raising awareness of which companies are responsible for how much of our greenhouse gas emissions improves the odds that companies will work harder to reduce that pollution in the interests of their good names, their business prospects and the climate, too.”
- “As current regulations stand, asset managers can get away with unacceptable greenwashing, leaving customers misinformed about where their money is being invested.”



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