

Overview and Status of SEC Climate-Related Disclosure Rules

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On March 6, 2024, almost two years after the Securities and Exchange Commission (the “**Commission**”) proposed climate-related disclosure rules (the “**Proposed Rules**”), the Commission adopted final rules (the “**Final Rules**”) requiring registrants to provide disclosure in registration statements and annual reports on:

- climate-related risks that have materially impacted, or are reasonably likely to have a material impact on, the registrant’s business strategy, results of operations or financial condition;
- the governance and management of such risks;
- for large-accelerated filers and accelerated filers, Scope 1 and Scope 2 greenhouse gas (“**GHG**”) emissions, if material, and to furnish a corresponding attestation report; and
- the financial statement effects of severe weather events and other natural conditions.

Recent Developments: As further discussed below, soon after the Final Rules were adopted, various states, organizations and companies filed suit. These suits were consolidated and the legal challenges are now being heard in the United States Eighth Circuit Court of Appeals. Following requests for an emergency order to halt implementation of the Final Rules while litigation is pending, on April 4, 2024, the Commission announced it is voluntarily staying the Final Rules in an attempt to facilitate resolution of the litigation.

Registrants currently disclose varying degrees of climate-related information utilizing disclosure frameworks developed and influenced by standard-setters, investor demands and other groups. In response to climate-related attention and investor focus, the Commission adopted the Final Rules to provide investors with sufficient information to allow them to evaluate a registrant’s exposure to material climate-related risks and make informed investment and voting decisions.

While the Final Rules use concepts from both the climate-related reporting framework established by the Task Force on Climate-Related Financial Disclosures (“**TCFD**”) and the accounting and reporting standards for GHG emissions in accordance with the Greenhouse Gas Protocol (“**GHG Protocol**”), the Final Rules do not incorporate all aspects of the TCFD framework or GHG Protocol standards. Importantly, the Final Rules added materiality qualifiers across much of the TCFD framework concepts. In addition, any future amendments to the TCFD or GHG Protocol will not be incorporated into the Final Rules unless the Commission takes further action to amend the Final Rules.

By way of background, the TCFD framework establishes 11 disclosure topics related to four core themes that provide a structure for the assessment, management and disclosure of climate-related financial risks: governance, strategy, risk management and metrics and targets. The Commission chose the TCFD framework because it has been widely adopted both in the United States and globally. By aligning disclosures with the TCFD framework, the Commission could potentially facilitate higher levels of consistency and comparability of the disclosures and reduce the compliance burden. The Final Rules on GHG emissions are based primarily on the GHG Protocol’s

Corporate Accounting and Reporting Standard. This standard provides methods to measure and report risk on seven GHGs and introduces the concept of Scope 1, Scope 2 and Scope 3 GHG emissions. The GHG Protocol has become the generally accepted standard for accounting and reporting of GHG emissions and has been broadly incorporated into existing sustainability reporting frameworks, such as the TCFD.

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