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Overview and Status of SEC Climate-Related Disclosure Rules

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INTRODUCTION

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.

The Final Rules vary from the Proposed Rules in several important respects, including the removal of the requirement to disclose Scope 3 GHG emissions and the removal of the requirement to disclose disaggregated Scope 1 and Scope 2 GHG emissions, except in limited circumstances. Only large-accelerated filers and accelerated filers are required to disclose Scope 1 and Scope 2 GHG emissions, if material. Despite the materiality qualifier for the disclosure of Scope 1 and Scope 2 GHG emissions, we expect most large-accelerated filers and accelerated filers will still track these emissions to support a determination of non-materiality. In addition, registrants should be mindful that if Scope 3 GHG emissions are included as part of a target or goal, then Scope 3 GHG emissions data must be tracked and disclosed. Generally, in the Final Rules, the Commission qualified several disclosure items with "material" and removed certain "prescriptive" requirements, opting instead for "non-exclusive lists" of disclosures.

The Final Rules add (i) a new Subpart 1500 of Regulation S-K that requires registrants to disclose certain climate-related information and GHG emissions metrics that could help investors assess climate-related risks and (ii) a new Article 14 to Regulation S-X that requires certain climate-related financial statement metrics and related disclosure to be included in a note to the registrant's audited financial statements.

Takeaways

The Regulation S-K disclosures required by the Final Rules will be subject to the registrant's disclosure controls and procedures, and the Regulation S-X disclosures will be subject to the registrant's internal controls over financial reporting. Importantly, certain disclosures will be subject to principal executive and financial officer certifications under the Sarbanes-Oxley Act of 2002. As such, registrants should develop adequate systems, controls and procedures to ensure compliance on a timely basis with the Final Rules. This could include (i) building out disclosure control and financial reporting teams, (ii) refining governance of climate-related risks, including the adoption of charter amendments to provide for oversight of various aspects of the new disclosure requirements, (iii) implementing sufficient procedures to collect and report information, and (iv) engaging appropriate service providers, such as a GHG emissions attestation provider.

Given the complexity of the Final Rules, registrants should start preparing for the new disclosure requirements now. Registrants will also need to consider the potential impact of climate-related risks on strategy, results of operations and financial condition. Prior to adopting new climate-related targets or goals or engaging in scenario analysis, registrants should consider the disclosure requirements associated with such actions. Registrants will also want to ensure consistency between existing disclosures, whether in ESG reports, on the registrant's website or in other Commission filings, and the new disclosures required by the Final Rules. Despite the latitude provided by the phase-in periods for compliance, registrants should stay current on the status of legal challenges and any subsequent developments.

OVERVIEW OF FINAL RULES

The table below sets forth an executive summary of select disclosure requirements in the Final Rules, as well as provides notes regarding changes from the Proposed Rules. Annex A to this Client Alert contains a substantive description of these disclosure requirements.

RULE	DESCRIPTION	NOTES REGARDING CHANGES FROM PROPOSED RULES
REGULATION S-K		
	CLIMATE-RELATED RISK	
DEFINITION OF CLIMATE-RELATED RISKS (ITEM 1500)	Climate-related risk is defined as the actual or potential negative impacts of climate-related conditions and events on a registrant's business, results of operations or financial condition. These risks include physical risks (which are further categorized into acute and chronic risks) and transition risks.	Negative climate-related impacts on a registrant's value chain no longer need to be disclosed, except where such risk has materially impacted or is reasonably likely to materially impact the registrant's business, results of operations or financial condition.
	GOVERNANCE	
BOARD OVERSIGHT (ITEM 1501(A))	Disclose board oversight of climate-related risks and, if applicable, identify any responsible board committee or subcommittee. If a target, goal or transition plan is disclosed, describe how progress is overseen.	The Final Rules do not require disclosure on board expertise with respect to climate-related risks. The Final Rules do not require disclosure of how frequently the board is informed of climate-related risks.
MANAGEMENT'S ROLE (ITEM 1501(B))	Disclose management's role in assessing and managing material climate-related risks. Include disclosure regarding whether any positions or committees are responsible for assessing and managing climate-related risks, the processes for assessment and management and whether such information is reported to the board.	The Final Rules limit such disclosure to material climate-related risks and require registrants to address, as applicable, a non-exhaustive list of disclosure items when describing management's role in assessing and managing the registrant's material climate-related risks.
	STRATEGY	
CLIMATE-RELATED RISKS (ITEM 1502(A))	Disclose any "climate-related risks" that have materially impacted or are reasonably likely to have a material impact on a registrant, including on its business strategy, results of operations or financial condition. The disclosure must note whether the risks are reasonably likely to manifest in the short-term (i.e., the next 12 months) and separately in the long-term (i.e., beyond 12 months). The Final Rules also include a non-exclusive list of items to disclose if applicable. Climate-related risks identified pursuant to Item 1502(a) are referred to as "Identified Climate-Related Risks."	In response to comments on the Proposed Rules, the Final Rules added materiality qualifiers and refer to the registrant's "business, results of operations and financial condition" rather than "consolidated financial statements." The Final Rules do not include reference to several specific items in the Proposed Rules, including the location (including ZIP code) and nature of properties subject to the risks, the percentage of properties and assets subject to certain risks or any negative climate-related impacts on a registrant's value chain, each of which no longer needs to be disclosed except where such risk has materially impacted or is reasonably likely to materially impact the registrant's

		business, results of operations or financial condition. Registrants are not required to assess and define a medium-term category.
MATERIAL IMPACTS OF CLIMATE-RELATED RISKS ON STRATEGY, BUSINESS MODEL AND OUTLOOK (ITEM 1502(B))	Describe the actual and potential material impacts of any Identified Climate-Related Risk on the registrant's strategy, business model and outlook. The Final Rules provide a non-exclusive list of types of impacts that could be disclosed, if material, including: • business operations, including the types and locations of its operations; • products or services; • suppliers, purchasers, or counterparties to material contracts to the extent known or reasonably available; • activities to mitigate or adapt to climate-related risks, including adoption of new technologies or process; and • expenditure for research and development. Material impacts of Identified Climate-Related Risks are referred to as "Identified Material Impacts."	In the Final Rules, the Commission removed the reference to "value chain" and qualified the requirement relating to suppliers and other third parties "to the extent known or reasonably available" to address comments to the Proposed Rule. The Final Rules include a materiality qualifier to clarify that a registrant is required to disclose only material impacts of the climate-related risks.
CONSIDERATION OF MATERIAL IMPACT AS PART OF STRATEGY, FINANCIAL PLANNING AND CAPITAL ALLOCATION (ITEM 1502(C))	Describe, as applicable, whether and how the registrant considers any Identified Material Impacts as part of its strategy, financial planning and capital allocation. This includes, as applicable, whether the Identified Material Impacts have been integrated into its business model or strategy, whether and how resources are being used to mitigate climate-related risks, and how any targets or transition plans relate to the registrant's business model or strategy.	The Final Rules eliminated several provisions of the Proposed Rules, including the requirement to describe how any of the financial statement metrics or GHG emissions metrics relate to the business model or strategy, as well as the role that the use of carbon offsets and RECs (defined below) played in the registrant's climate-related strategy.
MATERIAL IMPACT OF CLIMATE-RELATED RISKS ON BUSINESS, RESULTS OF OPERATIONS OR FINANCIAL CONDITION (ITEM 1502(D))	Provide a narrative discussion of whether and how Identified Climate-Related Risks have had or are reasonably likely to have a material effect on the registrant's business, results of operations or financial condition. This disclosure requires quantitative and qualitative descriptions of material expenditures incurred and material impacts on financial estimates and assumptions that, in management's view, directly resulted from activities to mitigate or adapt to Identified Climate-Related Risks.	The Final Rules added materiality qualifiers and referred to the registrant's "business, results of operations and financial condition" rather than "consolidated financial statements." The Final Rules added the requirement to include a quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions but in a change from the Proposed Rules, this disclosure is not required to be

		included in a note to the financial statements.
TRANSITION PLAN (ITEM 1502(E))	Describe the registrant's transition plan to manage a material transition risk, if the registrant has adopted such a transition plan. The Final Rules do not mandate the adoption of a transition plan. The registrant's progress under a transition plan must be updated each fiscal year in the annual report. The update must include quantitative and qualitative disclosure of material expenditures and material impacts on financial estimates and assumptions.	The Final Rules added a materiality qualifier to lessen the disclosure burden. Disclosure is only required if the registrant adopts a transition plan to manage a material transition risk.
SCENARIO ANALYSIS (ITEM 1502(F))	Disclose scenario analysis if (i) the registrant conducts such analyses to assess the impact of climate-related risks on its business, results of operations or financial condition and (ii) if based on the results of the scenario analysis, a registrant determines that a climate-related risk is reasonably likely to have a material impact on its business, results of operations or financial condition. If so, the registrant must describe each such scenario and provide a brief description of the parameters, assumptions and analytical choices used in addition to expected material impacts under each scenario. The Final Rules do not require registrants to conduct scenario analyses.	The Final Rules added a materiality qualifier to lessen the disclosure burden. Disclosure is only required if a climate related risk is likely material. In addition, the Final Rules call for a "brief" disclosure. The Final Rules removed the requirement for quantitative and qualitative disclosure.
INTERNAL CARBON PRICE (ITEM 1502(G))	If a registrant uses internal carbon pricing, disclose certain information about the internal carbon price, if such use is material to how the registrant evaluates and manages an Identified Climate-Related Risk. The required disclosure includes the price per metric ton of CO_2e and the total price, including how the total price is estimated to change over the short- and long-term.	The Final Rules removed the requirement to disclose *how* a registrant uses an internal carbon price and only require internal carbon pricing disclosure if the registrant uses internal carbon pricing. The Final Rules added a materiality qualifier to lessen the disclosure burden. Disclosure is only required if use of an internal carbon price is material to how the registrant evaluates and manages climate risks.
RISK MANAGEMENT		
PROCESS (ITEM 1503)	Disclose any processes the registrant has for identifying, assessing and managing material climate-related risks and, if the registrant is managing those risks, whether and how any are integrated into the registrant's overall risk management system or processes.	The Final Rules added a materiality qualifier to lessen the disclosure burden. Such disclosure is required only with respect to material climate-related risks. The Final Rules removed the requirement to disclose how the registrant: • determines the relative significance of climate-related risks compared to other risks; • considers existing or likely regulatory requirements or policies, such as GHG emissions

		limits, when identifying climate-related risks; • considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks; and • determines the materiality of climate-related risks.
TARGETS AND GOALS		
CLIMATE-RELATED TARGETS AND GOALS (ITEM 1504)	If the registrant sets climate-related targets and goals and determines that climate-related risks have affected or are reasonably likely to materially affect the registrant's business, results of operations or financial condition, disclosure is required. If carbon offsets or RECs have been used as a material component in achieving the targets or goals, describe separately such offsets or credits.	The Final Rules added a materiality qualifier to lessen the disclosure burden.
GHG EMISSIONS		
GHG EMISSIONS DATA (ITEM 1505)	Disclose Scope 1 and Scope 2 GHG emissions, if (i) the registrant is a large-accelerated filer or an accelerated filer and (ii) GHG emissions are material.	The Final Rules generally do not require disclosure of Scope 3 GHG emissions for any registrant. In addition, the Final Rules added a materiality qualifier to lessen the disclosure burden. GHG emissions are only required to be disclosed if material, and a constituent gas is only required to be disclosed if it is individually material. The Final Rules provide for flexibility in determining boundaries for GHG emissions reporting, requiring disclosure of the method used as well as any material differences from the registrant's financial statements.
ATTESTATION REQUIREMENT		
ATTESTATION REPORT (ITEM 1506(A))	An attestation report is required for Scope 1 and Scope 2 GHG emissions disclosures, with a phase-in period from limited assurance to reasonable assurance for large-accelerated filers.	The Final Rules extended the phase-in periods and required only limited assurance from accelerated filers.
REGULATION S-X		
SEVERE WEATHER EVENTS		
IMPACT OF SEVERE WEATHER EVENTS AND OTHER NATURAL CONDITIONS (RULE 14-02)	Disclose financial statement effects with a focus on capitalized costs, expenditures expensed, charges and losses incurred due to severe weather events. Also, disclose impacts on financial estimates and assumptions.	The Commission chose not to amend Reg. S-X to require disclosure on financial impact metrics and instead amended only to require disclosure on expenditure metrics (Rule 14-02(c)-(d)) and financial estimates and assumptions (Rule 14-02(h)).

CERTAIN COSTS AND LOSSES FROM SEVERE WEATHER EVENTS AND OTHER NATURAL CONDITIONS (RULE 14-02(C)-(D))	Disclose capitalized costs, expenditures expensed, charges and losses incurred as a result of severe weather events or other natural conditions. Disclosure under this Section is subject to a minimum threshold of one percent or more of the total line item for the relevant fiscal year and in any case, no disclosure is required if the amounts aggregate to less than $100,000 in the income statement or less than $500,000 in the balance sheet.	The Final Rules focus on discrete expenditures related to severe weather events and no longer require disclosure on such expenditures incurred to "mitigate the risks from severe weather events." The Commission significantly reduced the list of line items required to be addressed to capitalized costs, expenditures expensed, charges and losses. The Final Rules did not change the one-percent threshold but added the $100,000 and $500,000 de minimis thresholds to lower the burden on registrants.
CERTAIN COSTS AND LOSSES RELATED TO CARBON OFFSETS AND RECS (RULE 14-02(E))	If carbon offsets or RECs have been used as a material component of a registrant's plan to achieve its disclosed climate-related targets or goals, disclose (i) the aggregate amount of carbon offsets and RECs expensed, (ii) the aggregate amount of capitalized carbon offsets and RECs recognized, and (iii) the aggregate amount of losses incurred on the capitalized carbon offsets and RECs during the last fiscal year. Disclose the beginning and ending balances of capitalized carbon offsets and RECs on the balance sheet for the fiscal year.	The Final Rules removed the requirement to disclose costs and expenditures related to transition activities in the financial statements.

Note on Materiality

Under the Final Rules, "materiality refers to the importance of information to investment and voting decisions about a particular company, not to the importance of the information to climate-related issues outside of those decisions." Materiality should be understood using traditional securities law concepts of whether a reasonable investor would consider the disclosure important to making an investment or voting decision, or view an omission as significantly altering the total mix of information made available.

Another consideration to the materiality determination is the time frame over which climate-related risks are to be measured. In a change from the Proposed Rules, instead of requiring a registrant to disclose "any climate-related risks reasonably likely to have a material impact which may manifest over the short, medium and long term," registrants will follow a temporal standard more consistent with the existing Management's Discussion and Analysis disclosure framework. Registrants will be required to disclose climate-related risks that have materially impacted or are reasonably likely to have a material impact in the short-term and long-term.

A climate-related materiality determination should be specific to each registrant and one that considers both quantitative and qualitative factors. While materiality determinations are well-understood in the context of other Commission rules and regulations, it remains to be seen how registrants will assess materiality in the context of climate-related matters and how consistently materiality will be applied across individual registrants and collective industries. Registrants should also evaluate the need to maintain adequate books and records around materiality determinations should a finding of non-materiality later be challenged.

Location of Disclosure

The Final Rules require registrants to provide the required disclosure (i) in a separate, appropriately captioned section of its registration statement or annual report, (ii) in another appropriate section of the filing, such as Management's Discussion and Analysis, or (iii) by incorporating such disclosure by reference from another filing so long as the disclosure meets the electronic tagging requirements of the Final Rules.

Notably, while the Final Rules do not preclude incorporation by reference from a registrant's proxy statement to the extent allowed by existing rules, the Commission declined to expressly permit the disclosure to be incorporated by reference from a registrant's proxy statement pursuant to General Instruction G.3 of Form 10-K.

Safe Harbor

The Final Rules provide a safe harbor for climate-related disclosures under Subpart 1500 of Regulation S-K pertaining to transition plans, scenario analysis, the use of internal carbon price and targets and goals. The safe harbor provides that all such information, except for historical facts, is considered a forward-looking statement for purposes of the Private Securities Litigation Reform Act of 1995 ("***PSLRA***") safe harbor for forward-looking statements provided in Section 27A of the Securities Act of 1933 (the "***Securities Act***") and Section 21E of the Securities Exchange Act of 1934 (the "***Exchange Act***"). The PSLRA safe harbor does not apply to climate-risk related forward-looking statements included in financial statements.

The Commission provided examples of additional Subpart 1500 disclosures that will fall within the PSLRA statutory definition of "forward-looking statements" including:

- a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, capital structure or other financial items;
- a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;
- a statement of future economic performance, including any such statement contained in a discussion and analysis of financial condition by management, made pursuant to Commission rules;
- any statement of the assumptions underlying or relating to the above statements; and
- a statement containing a projection or estimate of items specified by Commission rule or regulation.

If the registrant meets all other PSLRA provisions (*i.e.*, clearly identifies the statement and accompanies the statement with meaningful cautionary language), the Final Rules provide that such registrant may rely on the PSLRA safe harbor. Depending upon the facts and circumstances, the bespeaks caution doctrine may also continue to apply to disclosures made pursuant to any Subpart 1500 provisions. In addition, the following climate-related statements made by certain issuers or in connection with transactions currently excluded from the PSLRA safe harbor will be eligible for the Final Rules' safe harbor:

- statements made in connection with an offering of securities by a blank check company;
- statements made with respect to the business or operations of an issuer of penny stock;
- statements made in connection with a rollup transaction;
- statements made in connection with an initial public offering; and
- statements made in connection with an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program.

The Commission determined that it was consistent with the public interest and protection of investors to extend the safe harbor to the entities and transactions enumerated above because such entities may be

subject to material climate-related risks that will require them to provide disclosures pursuant to the Final Rules.

Liability

The disclosures provided under the Final Rules are subject to management's disclosure controls and procedures. The Commission stated that some registrants may need to adopt, revise or enhance their controls and procedures in response to the Final Rules in order to provide reliable climate-related disclosures. A failure to implement such disclosure controls and procedures could lead to potential liability for deficient or otherwise improper disclosure. Climate-related disclosures under the Final Rules are "filed," as opposed to "furnished," and thus subject to potential liability under Section 18 of the Exchange Act and Section 11 of the Securities Act (if incorporated into a registration statement).

Structured Data Requirement

Under the Final Rules, companies must electronically tag climate-related disclosures in Inline XBRL. If the registrant incorporates by reference any climate-related disclosures from another filing, such disclosures must meet the electronic tagging requirements of the Final Rules.

Legal Challenge

The Final Rules are subject to various legal challenges, one of which resulted in a stay from the United States Fifth Circuit Court of Appeals. These legal challenges have included claims under the Major Questions Doctrine, Administrative Procedures Act and the First Amendment:

- Major Questions Doctrine – This theory argues that Congress does not delegate to executive agencies issues of vast economic or political significance. Opponents may claim that the Commission lacks authority to create a rule that effectively regulates climate change and represents a significant cost to registrants to provide such disclosures;
- Administrative Procedures Act – This theory rests on the belief that the Commission failed to justify the need for the Final Rules and therefore, promulgating such rule is arbitrary and capricious. In addition, legal challenges under the Administrative Procedures Act may refer to the Commission's enabling statutes and may claim that the Final Rules do not fall within the Commission's statutory rulemaking authority; and
- First Amendment – Opponents have argued that the Final Rules constitute compelled speech by mandating registrants to make controversial climate disclosures, and such compelled speech violates the First Amendment of the United States Constitution.

The Final Rules have been challenged in multiple Circuit Courts of Appeal. The Commission requested that the Judicial Panel on Multidistrict Litigation consolidate the suits. On March 21, 2024, a United States judicial panel consolidated at least nine legal challenges to the Final Rules, and the United States Eighth Circuit Court of Appeals was chosen via lottery to hear these challenges. 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. Despite these current and any future challenges, and given the breadth of the new disclosure requirements, registrants should take the necessary steps to prepare for compliance with the Final Rules.

Compliance Dates

Prior to the voluntary stay, the Final Rules would have become effective on May 28, 2024. However, various compliance dates would also depend upon a registrant's filing status and the nature of the disclosure. The table below sets forth the compliance dates for the Final Rules.

Compliance Dates under the Final Rules						
Registrant Type	Disclosure and Financial Statement Effects Audit		GHG Emissions/Assurance			Electronic Tagging
	All Reg. S-K and S-X disclosures, (other than otherwise noted)	*Item 1502(d)(2), 1502(e)(2) and 1504(c)(2)*	*Item 1505 (Scope 1 and 2 GHG emissions)*	*Item 1506 (Limited Assurance)*	*Item 1506 (Reasonable Assurance)*	*Item 1508 (Inline XBRL tagging for Subpart 1500)*[1]
Large-accelerated Filer	Fiscal year beginning **2025**	Fiscal year beginning **2026**	Fiscal year beginning **2026**	Fiscal year beginning **2029**	Fiscal year beginning **2033**	Fiscal year beginning **2026**
Accelerated Filer (other than SRC and EGC)	Fiscal year beginning **2026**	Fiscal year beginning **2027**	Fiscal year beginning **2028**	Fiscal year beginning **2031**	N/A	Fiscal year beginning **2026**
Non-accelerated filers, SRCs and EGCs	Fiscal year beginning **2027**	Fiscal year beginning **2028**	N/A	N/A	N/A	Fiscal year beginning **2027**
1. Financial statement disclosures under Article 14 will be required to be tagged in accordance with existing rules pertaining to the tagging of financial statements. See Rule 405(b)(1)(i) of Regulation S-T.						

The adopting release for the Final Rules can be found here. For further information regarding disclosure, compliance and governance questions, please contact a member of the Haynes and Boone Capital Markets and Securities Practice Group. For additional information regarding enforcement consequences for public companies, please contact a member of Haynes and Boone's SEC Enforcement Group.

REGULATION S-K

The below summary describes certain disclosure requirements under Subpart 1500, as implemented by the Final Rules.

Governance

Board of Director Oversight

Item 1501(a) of Regulation S-K requires a description of the board of directors' oversight of climate-related risks as well as the identification, if applicable, of any board committee or subcommittee responsible for the oversight of climate-related risks together with a description of the processes by which the board, such committee and/or subcommittee is informed about such risks. Additionally, if the registrant discloses targets, goals or transitions plans pursuant to Regulation S-K, the registrant must also disclose whether and how the board oversees the progress of such targets, goals or transition plans. This disclosure is not required for registrants that do not exercise board oversight of climate-related risks.

In response to comments received on the Proposed Rules, the Commission removed requirements from the Proposed Rules to disclose the identity of specific board members responsible for climate-risk oversight, whether any board member has expertise in climate-related risks and the nature of the expertise, how frequently the board is informed of such risks, and information regarding whether and how the board sets climate-related targets or goals. Notably, the Commission did not include a materiality qualifier due to the belief that if the board of directors determines to oversee a particular risk or if said risk is elevated to the board level, such risk is likely material.

Management's Role

Item 1501(b) of Regulation S-K requires a description of management's role in assessing and managing the registrant's material climate-related risks. The Commission provides a non-exclusive list of items to discuss when describing management's role in assessing and managing the registrant's material climate-related risks, including:

- whether and which management positions or committees are responsible for assessing and managing climate-related risks, and the relevant expertise of such position holders or committee members;
- the process by which such positions or committees assess and manage climate-related risks; and
- whether such positions or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.

The Final Rules do not require registrants to develop oversight processes or engage in material climate-related risk oversight. Instead, the Commission explains that the Final Rules "seek to elicit disclosure about existing oversight practices that will allow investors to make better informed judgments about registrants' oversight processes and mechanisms in light of their overall investment objectives and risk tolerance."

Impacts of Climate-Related Risks

Under the Final Rules, registrants are required to describe the actual and potential material impacts of any climate-related risk identified pursuant to Item 1502(a) of Regulation S-K on the registrant's strategy, business model and outlook. To avoid confusion, this modified Item 1502(b) specifies that such disclosure is limited to *material* impacts of climate-related risks. The Final Rules provide a non-exclusive list of types of impacts that could be disclosed, if material, including:

- business operations, including the types and locations of its operations;
- products or services;
- suppliers, purchasers, or counterparties to material contracts to the extent known or reasonably available;
- activities to mitigate or adapt to climate-related risks, including adoption of new technologies or process; and
- expenditure for research and development.

Compared to the Proposed Rules, the Commission removed reference to potential material impacts on suppliers and other parties in a registrant's value chain and replaced it with the third bullet point above. The use of "to the extent known or reasonably available" serves as an additional example of departures from the Proposed Rules in response to concerns about the compliance burden.

Item 1502(c) of Regulation S-K requires a registrant to consider material impacts as part of its strategy, financial planning and capital allocation. Each registrant must describe, as applicable, whether the impacts of the climate-relate risks described in 1502(b) have been integrated into its business model or strategy and how any targets or transition plans relate to the registrant's business model or strategy.

Item 1502(d) of Regulation S-K requires a registrant to provide a narrative discussion of whether and how the climate-related risks identified in 1502(a) have had or are reasonably likely to have a material effect on the registrant's business, results of operations and financial condition. This disclosure requires quantitative and qualitative descriptions of the material expenditures incurred and material impacts on financial estimates and assumptions that, in management's view, directly resulted from activities to mitigate or adapt to climate-related risks disclosed under 1502(b). Such disclosure, when taken together with the other requirements of Item 1502, is designed to provide insight into a registrant's decision-making concerning material climate-risk, as well as how management views and considers the impacts of material climate-related risks on a registrant's business. If a registrant has adopted a transition plan to manage material climate risks, the registrant is required to disclose a description of the plan and to update its annual report disclosure each fiscal year by describing any actions taken during the year under the plan, including how such actions have impacted the registrant's business, results of operations or financial condition. Registrant's will also need to provide quantitative and qualitative disclosure of material expenditures incurred, both capitalized and expensed, and material impacts on financial estimates and assumptions as a direct result of the actions taken under the plan.

The Commission acknowledges that registrants will need time to develop adequate systems, controls and procedures to track and report (i) the impact of transition plans and (ii) the direct results from mitigation and adaptation activities on financial estimates and assumptions. As a result, the Final Rules provide a phase-in for compliance with Items 1502(d)(2) and 1502(e)(2).

The Commission emphasizes that certain disclosure items are only required if applicable to the registrant. For example, transition plan disclosure is only required if the registrant has adopted a transition plan. Similarly, Item 1502(f) requires the disclosure of scenario analysis if (i) the registrant conducts such analysis to assess the impact of climate-related risks on its business, results of operations or financial condition and (ii) based on the results of the scenario analysis, a registrant determines that a climate-related risk is reasonably likely to have a material impact on its business, results of operations or financial condition. If both clauses (i) and (ii) are true, the registrant must describe each such scenario and provide a description of the parameters, assumptions and analytical choices used in addition to expected material impacts under each scenario.

Registrants that use internal carbon pricing are required to disclose certain information about the internal carbon pricing, if such use is material to how the registrant evaluates and manages a climate-related risk identified under Item 1502(a). The required disclosure includes the price per metric ton of CO_2e and the total price, including how the total price is estimated to change over the short and long-term.

Risk Management

The Commission added a materiality qualifier to the Final Rules related to risk management disclosure and permitted flexibility for registrants to tailor their disclosure to what is relevant to each registrant, with a focus on the information that would be most useful to investors. Generally, the Commission determined that the most useful information to investors is a description of the processes for identifying, assessing and managing material climate-related risks. Similar to other disclosure requirements in the Final Rules, if a registrant has not identified a material climate-related risk, no disclosure is required under Item 1503. Additionally, instead of providing a list of disclosure items that must be included, the Final Rules require the registrant to determine which factors are most significant, and therefore should be addressed, based on its particular facts and circumstances.

A registrant is also required to disclose how it identifies whether it has incurred or is reasonably likely to incur a material physical or transition risk, which may differ depending on the type of risk at issue. The Final Rules provide that a registrant should discuss, if applicable, how it decides whether to "mitigate, accept or adapt" to a particular risk and how it determines whether to address the climate-related risk.

Similar to the Proposed Rules, a registrant that is managing a material climate-related risk must disclose whether and how any of the processes it has described for identifying, assessing and managing the material risk have been integrated into the registrant's overall risk management system or processes.

Climate-Related Targets and Goals

Under Item 1504 of Regulation S-K, registrants are now required to disclose any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant's business, results of operations or financial condition. The costs associated with material expenditures or operational changes required to achieve the target or goal were both provided as examples of ways in which targets or goals could materially affect a registrant's business, results of operations or financial condition. This disclosure must include any additional information or explanation necessary to understand the material impact of the target or goal including, as applicable, descriptions of: (i) the scope of activities included in the target, (ii) relevant units of measurement, (iii) the time horizon by which the target is intended to be achieved, (iv) means by which progress will be tracked, and (v) a qualitative description of how the registrant intends to meet the targets or goals. Like other examples provided by the Commission, this list is non-exclusive. Registrants will be required to annually update any progress toward meeting the target or goal and how such progress has been achieved.

In a departure from the Proposed Rules and to avoid the impression that GHG emissions disclosure is required irrespective of materiality to a registrant's targets or goals, the Final Rules do not focus on or mention GHG emissions as a necessary or prescribed aspect of this disclosure.

Each registrant must quantitatively and qualitatively describe any material expenditures and impacts on its financial estimates and assumptions as a direct result of the target or goal or the actions taken to make progress toward meeting the goal. The Final Rules provide for flexibility in the location of such disclosure, which may be included as part of a registrant's discussion of (i) transition plans, (ii) the material impacts of climate-related risks on its business strategy or business model, or (iii) risk management.

Carbon Offsets and RECs

Registrants are required to disclose certain information about carbon offsets and renewable energy credits or certificates ("***RECs***") if they have been used as a material component of a registrant's plan to achieve climate-related targets or goals. The determination of whether these carbon offsets and RECs are material will be specific to each registrant. If a registrant determines that disclosure is required, it must then disclose (i) the amount of carbon avoidance, reduction or removal represented by the offsets or the amount of generated renewable energy represented by the RECs, (ii) the nature and source of the offsets or RECs, (iii) a description and location of the underlying projects, (iv) any registries or other authentication of the offsets or RECs, and (v) the cost of the offsets or RECs.

GHG Emissions Disclosure

The Final Rules require large-accelerated filers and accelerated filers to disclose Scope 1 and Scope 2 GHG emissions in annual reports and registration statements if material. No registrant is required to disclose Scope 3 GHG emissions, unless voluntarily included in a target or goal. SRCs and EGCs are exempt from all GHG emissions disclosures.

Scope 1 emissions are direct GHG emissions from operations owned or controlled by a registrant. Scope 2 emissions include indirect GHG emissions from the generation of purchased or acquired energy sources that are consumed by operations owned or controlled by a registrant. Scope 3 GHG emissions encompass all indirect GHG emissions that otherwise fall outside of Scope 2 and occur upstream or downstream in a registrant's value chain.

Under the Proposed Rules, such GHG emissions disclosure was required for the annual report of the most recently completed fiscal year, with certain exceptions for fourth quarter reporting and any registration statement filed after the Proposed Rule's effective date. Scope 3 GHG emissions disclosure was required if GHG emission metrics were material or if the registrant set a reduction target or goal that included Scope 3 GHG emissions. Further, under the Proposed Rule, Scope 3 GHG emissions disclosures were not required at all for SRCs.

The changes in the required GHG emissions disclosure represents one of the key departures from the Proposed Rules. While Scope 1 and Scope 2 GHG emissions disclosure is still required, Scope 3 GHG emissions disclosure is now voluntary. To address concerns related to the high cost of compliance as well as concerns about the current availability and reliability of the underlying data for Scope 3 GHG emissions, the Final Rules limit all GHG emissions disclosure to large-accelerated filers and accelerated filers. The addition of the materiality qualifier on Scope 1 and Scope 2 GHG emissions is another departure from the Proposed Rules. When assessing materiality, each registrant should consider whether the GHG emissions are significant enough to subject the registrant to a transition risk that will, or is reasonably likely to, materially impact the registrant's business, results of operations or financial condition. For example, GHG emissions would likely be material if, as a result of GHG emissions, the registrant is likely to be subject to additional regulatory burdens. In addition, disclosure would be required if it is necessary to understand a registrant's progress towards a target, goal or transition plan.

The required disclosure must be expressed in the aggregate in terms of CO_2e, with such expression in gross terms that excludes the impact of any purchased or generated offsets. If any constituent gas of disclosed GHG emissions is individually material, it must be disaggregated from other gases in the disclosure. Further, registrants must describe (i) the methodology and significant inputs and assumptions used to calculate the GHG emissions; (ii) the organizational boundaries used to calculate GHG emissions, including (a) the method used to determine such organizational boundaries, (b) an explanation of any material difference between the scope of entities and

operations included in the registrant's consolidated financial statements and those of the organizational boundaries, and (c) the approach to categorization of GHG emissions and GHG emissions sources; and (iii) a description of the protocol or standard used to report the GHG emissions (such as GHG Protocol Corporate Accounting and Reporting Standard, EPA regulation, applicable ISO standard, or any other), the approach to calculation (such as a location-based method, market-based method, or both), the type and source of emission factors used in the disclosure (but not quantitative emission factors) and identify any calculation tools used to calculate the GHG emissions. Registrants are not required to disclose GHG emissions in terms of intensity. Reasonable estimates may be used in the disclosure so long as the disclosure also describes the underlying assumptions and explains the registrant's reasons for using such estimates.

Phase-In approach

For registrants subject to the new disclosure requirements that have previously disclosed Scope 1 and/or Scope 2 GHG emissions, disclosure is required for the most recently completed fiscal year and any historical fiscal year covered in the consolidated financial statements to the extent the information was previously disclosed in a Commission filing. For registrants subject to the new disclosure requirements that have not previously disclosed such GHG emissions, disclosure is required for the most recently completed fiscal year after the compliance date of the Final Rules.

In addition, the Final Rules allow for GHG emissions disclosures to be incorporated by reference from the registrant's second quarter Form 10-Q in the fiscal year immediately following the year to which the disclosure relates or in an amendment to the Form 10-K annual report filed before the deadline for filing the following year's Form 10-Q covering the second quarter. A registrant must include an express statement stating the registrant's intent to incorporate by reference or amend the annual report to include both the required disclosure and, as applicable, the required attestation report (discussed below).

The Final Rules require registration statement disclosures of GHG emissions metrics to be included as of the most recently completed fiscal year that ends 225 days or less before the registration statement's effective date.

Attestation Reports

Registrants subject to the GHG emissions disclosure requirements are required to include an attestation report covering such disclosure in the relevant filing, similar to auditor assurances on financial statements. The Final Rules, substantially similar to the Proposed Rules, require the attestation provider to have certain expertise in GHG emissions and independence standards with respect to the registrant and its affiliates. The expertise requirement is applicable to the person or firm signing the attestation report, and the attestation service provider will be subject to certain liability regimes under federal securities laws for the attestation conclusion or opinion, as applicable.

The Final Rules contemplate two levels of assurance in the attestation reports, applicable on a scaled approach relative to the registrant's filer status: (i) limited assurance, or assurance equivalent to that provided for interim financial statements included in a Form 10-Q, and (ii) reasonable assurance, or assurance equivalent to that provided for audited financial statements included in a Form 10-K. Most registrants currently obtaining voluntary assurances obtain limited assurance. The scope of work in a limited assurance engagement is substantially less than that of reasonable assurance and includes differences in the nature, timing and extent of procedures required to obtain sufficient and appropriate evidence to support the level of assurance provided. The Final Rules contemplate that reasonable assurance will provide greater value to investors due to an increase in reliability of

information compared to limited assurance, with a resulting benefit to registrants due to enhanced investor confidence and potential lower cost of capital.

Accelerated filers are not required to obtain an attestation report above the limited assurance level. Large-accelerated filers are required to obtain attestation reports at limited assurance levels for the first four years of reporting, graduating to reporting at reasonable assurance levels beginning the fifth year of reporting. Further, private companies that are a party to certain business combination transactions are not subject to the attestation report requirements.

Registrants are required to disclose whether the attestation engagement is subject to any oversight inspection program and if so, which program, as well as certain information when there is a change in or disagreement with the attestation provider.

REGULATION S-X

The below summary describes certain financial statement requirements under Article 14, as implemented by the Final Rules.

The Final Rules adopt amendments to Regulation S-X. Under the Final Rules, a registrant is required to include certain financial statement disclosures in any filing that requires (i) disclosure under Subpart 1500 of Regulation S-K and (ii) audited financial statements, regardless of whether the registrant has information to disclose under the new requirements. The required financial statement disclosures include financial statement effects and certain disaggregated financial metrics, expressed in a note to the financial statements. Such financial statement disclosure requirements are equally applicable to SRCs and EGCs. Similar to the GHG emissions disclosure, private companies that are a party to certain business combination transactions are not subject to such financial statement disclosures.

The Proposed Rules required disclosure under three discrete categories: (i) financial impact metrics, (ii) expenditure metrics, and (iii) financial estimates and assumptions. The Commission did not adopt the financial impact metrics. As to expenditure metrics, under the Final Rules a registrant must disclose (i) the aggregate amount of expenditures expensed as incurred and losses, excluding recoveries, incurred during the fiscal year as a result of severe weather events and other natural conditions, and (ii) the aggregate amount of capitalized costs and charges, excluding recoveries, recognized during the fiscal year as a result of severe weather events and other natural conditions. Each of these is subject to a one-percent disclosure threshold, along with de minimis thresholds that exempt disclosure of amounts that aggregate to less than $100,000 in the income statement or less than $500,000 in the balance sheet. Further, separate disclosure is required of any recoveries resulting from severe weather events and other natural conditions such that the disclosure reflects the net effect of severe weather events and other natural conditions on the registrant's financial statements. Separate disclosure is also required regarding where on the income statement and balance sheet, as applicable, the capitalized costs, expenditures expensed, charges and losses are presented.

While costs and expenditures related to general transition activities are not required disclosures, registrants are required to disclose certain information related to capitalized costs, expenditures expensed and losses related to the purchase and use of carbon offsets and RECs in the financial statements. This disclosure is required if carbon offsets or RECs have been used as a material component of a plan to achieve climate-related targets or goals, and this disclosure is not subject to the one-percent disclosure threshold. Further, registrants are required to disclose the beginning and ending balances of capitalized carbon offsets and RECs on the balance sheet.

Regarding financial estimates and assumptions, the Final Rules require disclosure of financial estimates and assumptions related to any transition plans disclosed by the registrant and whether (i) the estimates and assumptions used by the registrant to produce the consolidated financial statements were impacted by risks and uncertainties associated with, or known impacts from, any climate-related targets disclosed by the registrant and (ii) the estimates and assumptions used to prepare the consolidated financial statement were materially impacted by exposure to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions, or any climate-related targets or transition plans disclosed by the registrant. If such impact occurred, registrants are required to provide a qualitative description of how such estimates and assumptions were impacted by the events, conditions, disclosed targets or transition plans.

In addition, registrants are required to disclose contextual information describing how each financial statement effect was derived, including the significant inputs and assumptions used, significant judgments made and other information that is important to understanding the financial statement effect and, if applicable, policy decisions made by the registrant to calculate specified disclosures.