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A Guide to the SEC's New Climate Disclosure Rules

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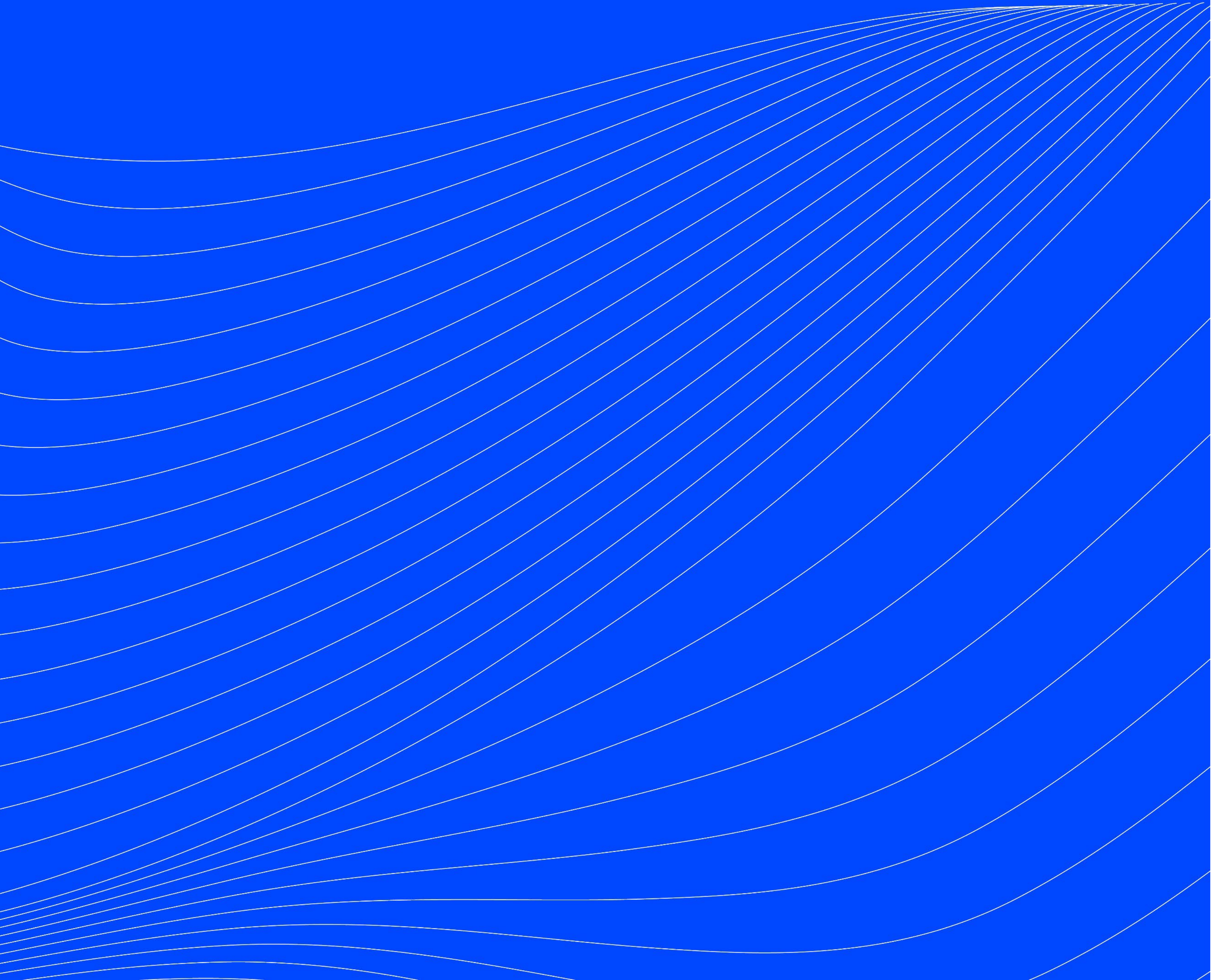

A Guide to the SEC's New Climate Disclosure Rules[1]

On March 6, 2024, the Securities and Exchange Commission (SEC) adopted climate disclosure rules which will require registrants to disclose detailed new climate-related disclosures in annual reports and registration statements. These rules come almost two years after the SEC first issued proposed climate-related disclosure rules on March 21, 2022.

The final rules will create a new subpart 1500 of Regulation S-K and Article 14 of Regulation S-X, and will require a registrant to provide to investors, among other things:

- a description of any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including the actual or potential material impacts of those same risks on its strategy, business model, and outlook;
- specified disclosures regarding use of transition plans, scenario analysis, or internal carbon prices to manage a material climate-related risk;
- disclosure about any board of directors and management oversight of climate-related risks;
- a description of any processes the registrant uses to assess or manage material climate-related risks;
- disclosure about any material climate-related targets or goals;
- disclosure of material Scope 1 and/or Scope 2 GHG emissions by certain larger registrants and the filing of an attestation report covering the required disclosure of such registrants' Scope 1 and/or Scope 2 GHG emissions; and
- disclosure of the financial statement effects of severe weather events and other natural conditions including costs and losses.

Notable changes to the final rules adopted by the SEC from the original proposed rules include, among others:

- adopting a less prescriptive approach in certain of the final rules;
- exempting Smaller Reporting Companies (SRCs) and Emerging Growth Companies (EGCs) from the Scope 1 and Scope 2 GHG emissions disclosure requirements;

[1] "A Guide to the SEC's New Climate Disclosure Rules" was written by Craig Adoor, Steven Barrett, Robert Joseph, Victoria Sitz, and Andrew Spector of Husch Blackwell's Securities and Corporate Governance practice group.

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- eliminating the proposed requirement to provide Scope 3 GHG emissions disclosure; and

- extending certain phase-in periods.

More detailed information regarding the new rules and the phased-in compliance dates, as well as the notable changes from the original proposals, is provided below.

CLIMATE-RELATED DISCLOSURES

Disclosure of Climate-Related Risks

New Item 1502(a) of Regulation S-K requires the disclosure of any climate-related risks identified by the registrant that have had or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations, or financial condition in the short-term (i.e., the next 12 months) and in the long-term (i.e., beyond the next 12 months).

Under the final rules, "climate-related risks" 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." Climate-related risks include both physical risks and transition risks, as follows:

- physical risks include acute risks (event-driven risks that could relate to short-term severe weather events such as tornadoes, floods, and hurricanes) and chronic risks (due to longer term weather patterns and include drought, sustained higher temperatures, and sea level rise); and

- transition risks include "the actual or potential negative impacts on a registrant's business, results of operations, or financial condition attributable to regulatory, technological, and market changes to address the mitigation of, or adaption to, climate-related risks," along with increased costs due to climate-related changes in law or policy, reduced demand for carbon-intensive products, devaluation or abandonment of assets, and liability or legal costs.

A registrant that identifies a climate-related risk is required to disclose whether the risk is a physical risk or transition risk and to provide information that adequately describes the nature of the risk and the registrant's exposure to the risk. If a physical risk is identified, the registrant must disclose whether it is an acute or chronic risk and the geographic location and nature of the registrant's properties, process, or operations subject to the risk. If a transition risk is identified, the registrant must disclose whether it relates to regulatory, technological, market, or other transition-related risks and the impact on the registrant.

An identified climate-related risk must be disclosed only if it has materially impacted a registrant or is reasonably likely to have a material impact on the registrant in the short-term (i.e., the next 12 months) and long-term (i.e., beyond the next 12 months). For purposes of the materiality determinations under the new climate disclosure rules, registrants should look to the general materiality standard that is used throughout the securities laws—a risk is considered material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote, or such a reasonable investor would

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view omission of the disclosure as having significantly altered the total mix of information made available. A registrant must consider both qualitative and quantitative factors in making any such materiality determination.

In a departure from the original proposal, (i) the definition of climate-related risks, including transition risks, no longer includes negative climate-related impacts on a registrant's value chain and (ii) the final rules do not require disclosure of ZIP codes when disclosing geographic location.

Disclosure of Impacts of Climate-Related Risks

New Item 1502(b) of Regulation S-K requires registrants to disclose the actual and potential material impacts of any identified climate-related risks on the registrant's strategy, business model, and outlook.

The types of potential material impacts the SEC expects a registrant to consider include, but are not limited to, material impacts on a registrant's (i) business operations (including types and locations of operations), (ii) products or services, (iii) suppliers, purchasers, or counterparties to material contracts (to the extent known or reasonably available), (iv) activities to mitigate or adapt to identified risks (including new technology adoption), and (v) expenditures for research and development.

In a departure from the original proposal, the final rules make explicit that Item 1502(b) of Regulation S-K only applies to material impacts of climate-related risks.

New Item 1502(c) of Regulation S-K requires a registrant to disclose whether and how a registrant considers any material impacts described in response to Item 1502(b) of Regulation S-K as part of its strategy, financial planning, and capital allocation. In particular, a registrant is to disclose whether the impacts of climate-related risks have been integrated into the registrant's business model or strategy, including whether and how resources are used to mitigate climate-related risks, and how the targets and transition plans that are required to be disclosed relate to the registrant's business model or strategy.

Under new Item 1502(d) of Regulation S-K, if, as part of its strategy, a registrant has undertaken activities to mitigate or adapt to a material climate-related risk, the registrant must provide a quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from such mitigation or adaptation activities.

Under new Item 1502(g) of Regulation S-K, a registrant must provide certain disclosures concerning its use of any internal carbon price that is material to how it evaluates and manages a material climate-related risk it has identified as having materially impacted, or being reasonably likely to materially impact, the registrant, including impacts on its business strategy, results of operations, or financial condition.

Disclosure of Climate-Related Transition Plans and Scenario Analysis

Under new Item 1502(e) of Regulation S-K, if a registrant has adopted a transition plan to manage a material transition risk, the registrant must provide a description of the transition plan, and updated disclosures in subsequent years describing the actions taken during the year under the plan, including how such actions have impacted the registrant's business, results of operations, or financial condition, and quantitative and qualitative

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disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the disclosed actions.

The final rules define a “transition plan” to mean a registrant’s strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its greenhouse gas (GHG) emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations. Transitions plans are not mandatory and if a registrant does not have such plan, no disclosure is required.

The final rules require a registrant, as part of its updating disclosure, to include quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the disclosed actions taken under the plan. A registrant also must consider whether any individually immaterial expenditures are material in the aggregate (if so, disclosure is required).

Under new Item 1502(f) of Regulation S-K, if a registrant uses scenario analysis and, in doing so, determines that a climate-related risk is reasonably likely to have a material impact on its business, results of operations, or financial condition, the registrant must include a brief description of the parameters, assumptions, and analytical choices used, and the expected material impacts, including financial impacts, on the registrant under each scenario.

In a departure from the original proposal, the final rules no longer require disclosure of the resilience of the registrant or the use of “any analytical tools,” but rather only the registrant’s use of scenario analysis.

Disclosure of Governance and Oversight of Climate-Related Risks

New Item 1501(a) of Regulation S-K requires a registrant to provide disclosure concerning any oversight by the board of directors of climate-related risks and any role of management in assessing and managing the registrant’s material climate-related risks. Registrants must identify, if applicable, any board committee or subcommittee responsible for such oversight and describe how the board, committee, or subcommittee is informed of climate-related risks. If a target, goal, or transition plan is disclosed by a registrant, the registrant must also disclose whether and how the board oversees the registrant’s progress relative to the plan. No disclosure is necessary for registrants that do not exercise board level oversight of climate-related risks.

In a departure from the original proposal, the final rules do not include requirements to disclose (i) the identity of specific board members responsible for climate-risk oversight, (ii) whether any board member has expertise in climate-related risks and the nature of the expertise, (iii) how frequently the board is informed of such risks, or (iv) information regarding whether and how the board sets climate-related targets or goals, including interim targets or goals.

New Item 1501(b) of Regulation S-K requires a registrant to provide disclosure concerning management’s role in assessing and managing climate-related risks. The final rules detail a non-exhaustive list of related disclosure considerations similar to the structure of the new cybersecurity disclosure requirements in Item 106 of Reg. S-K, including whether and which management positions or committees are responsible for assessing and managing climate-related risk and their expertise, the processes for how such positions or committees assess and manage

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climate-related risks, and whether those positions or committees report such risks to the board, or to a board committee or subcommittee. As in the case of board oversight, this disclosure requirement does not apply if management does not engage in oversight of material climate-related risks.

In a departure from the original proposal, the final rule eliminated many of the prescriptive disclosure elements from the proposal.

Disclosure of Climate-Related Risk Management

New Item 1503 of Regulation S-K requires a registrant to 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 such processes are integrated into the registrant's overall risk management system or processes. A registrant must disclose any existing processes for identification, assessment, and management of material climate-related risks and must address how it identifies whether a material physical or transition risk has occurred, how it decides whether to mitigate, accept, or adapt to the identified risk, and prioritization compared to other risks.

In a departure from the original proposal, the final rules allow a registrant the flexibility to determine what factors are most significant (and therefore should be addressed) based on the registrant's facts and circumstances.

Disclosure of Climate-Related Targets and Goals

Under new Item 1504(a) of Regulation S-K, if a registrant has set a climate-related target or goal that has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition (for instance, because material expenditures or operational changes will be necessary to achieve the target or goal), the registrant must provide certain disclosures about such target or goal, including any additional information or explanation necessary to an understanding of the material impact or reasonably likely material impact of the target or goal, including, as applicable:

- the scope of activities included in the target;
- the unit of measurement;
- the defined time horizon by which the target is intended to be achieved;
- whether the time horizon is based on one or more goals established by a climate-related treaty, law, regulation, policy, or organization;
- if the registrant has established a baseline for the target or goal, the defined baseline time period, and the means by which progress will be tracked; and
- a qualitative description of how the registrant intends to meet its climate-related targets or goals.

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A registrant may provide the required targets and goals disclosure as part of its discussion regarding its transition plan, the material impacts of climate-related risks on its business, or risk management.

Any target or goal materially affecting a registrant's business, results of operations, or financial condition will need to be disclosed, regardless of the particular issues it addresses, if that target or goal is considered climate-related in the registrant's particular circumstances and if achieving such target or goal would materially impact its business, results of operations, or financial condition.

In a departure from the original proposal, the final rules eliminated the proposed disclosure item regarding whether a target is absolute or intensity-based.

New Item 1504(b) of Regulation S-K requires disclosure, as applicable, of how a registrant intends to meet its climate-related targets or goals. The final rules (i) specify that this discussion of prospective activities need only be qualitative and (ii) leave it up to the registrant to determine what specific factors to highlight as part of the qualitative description of how it plans to meet its targets or goals.

New Item 1504(c) of Regulation S-K requires a registrant to disclose any progress toward meeting a target or goal by describing the actions taken during the year to achieve the targets or goals. A registrant must include a discussion of any material impacts to the registrant's business, results of operations, or financial condition as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal (including quantitative and qualitative disclosure of any material expenditures and material impacts on financial estimates and assumptions).

If carbon offsets or renewable energy credits or certificates (RECs) have been used as a material component of a registrant's plan to achieve climate-related targets or goals, then, under new Item 1504(d) of Regulation S-K, the registrant will be required to disclose:

- the amount of carbon avoidance, reduction, or removal represented by the offsets or the amount of generated renewable energy represented by the RECs;
- the nature and source of the offsets or RECs;
- a description and location of the underlying projects;
- any registries or other authentication of the offsets or RECs; and
- the cost of the offsets or RECs.

Disclosure of Material Greenhouse Gas (GHG) Emissions

New Item 1505 of Regulation S-K requires Large Accelerated Filers (LAFs) and Accelerated Filers (AFs) that are not otherwise exempt from disclosure (as SRCs and EGCs are) to disclose Scope 1 and Scope 2 GHG emissions if such emissions are material. The SEC has made clear that a registrant should apply traditional notions of

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materiality under the federal securities laws when evaluating whether its Scope 1 and/or Scope 2 GHG emissions are material.

A registrant's Scope 1 and/or Scope 2 GHG emissions may be material because their calculation and disclosure are necessary to allow investors to understand whether those emissions are significant enough to subject the registrant to a transition risk that will or is reasonably likely to materially impact its business, results of operations, or financial condition in the short- or long-term. A registrant's GHG emissions may also be material if their calculation and disclosure are necessary to enable investors to understand whether the registrant has made progress toward achieving a target or goal or a transition plan that the registrant is required to disclose under the final rules.

The final rules require the disclosure of the GHG emissions in the aggregate in terms of CO_2e[2] (except to the extent that any constituent gas is individually material, in which case such constituent gas must be disaggregated). Under the final rules, a registrant that is required to disclose its Scope 1 and/or Scope 2 GHG emissions must disclose those emissions in gross terms by excluding the impact of any purchased or generated offsets. Disclosure of certain information about the carbon offsets or RECs is limited to only those situations where they have been used as a material component of a registrant's plan to achieve climate-related targets or goals.

A registrant will be required to describe the methodology, significant inputs, and significant assumptions used to calculate the registrant's disclosed GHG emissions, which include:

- the organizational boundaries used when calculating its Scope 1 GHG emissions and/or its Scope 2 GHG emissions (including the method used to determine the boundaries and the approach to categorization of emissions and emissions sources);
- the protocol or standards used, emissions factors, and any calculation tools used to calculate GHG emissions; and
- any reasonable estimates used.

Material Scope 1 and/or Scope 2 GHG emissions must be disclosed for the most recently completed fiscal year and, to the extent previously disclosed in a SEC filing, for the historical fiscal year(s) included in the consolidated financial statements included in the filing.

The SEC recognized that a registrant may have difficulty measuring and reporting its GHG emissions as of fiscal year-end by the same deadline for its annual report on Form 10-K. To address this concern, the final rules provide that any GHG emissions metrics required to be disclosed in an annual report filed with the SEC on Form 10-K may be incorporated by reference from the registrant's Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions disclosure relates, or may be included in an amended

[2] CO_2e, or carbon dioxide equivalent, is the common unit of measurement to indicate the global warming potential (GWP) of each greenhouse gas, expressed in terms of the GWP of one unit of carbon dioxide.

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annual report on Form 10-K no later than the due date for such Form 10-Q. This extension of the deadline for the filing of GHG emissions metrics also applies to the deadline for the filing of an attestation report discussed below.

In one of the most significant changes from the original proposal, the final rules do not require registrants to disclose Scope 3 GHG emissions.

Safe Harbors

As a result of new Item 1507 of Regulation S-K, disclosures (other than historic facts) concerning transition plans (Item 1502(e)), scenario analysis (Item 1502(f)), internal carbon pricing (Item 1502(g)), and targets and goals (Item 1504) are subject to a safe harbor. The safe harbor provides that all information required by the specified sections, except for historical facts, is considered a forward-looking statement for purposes of the Private Securities Litigation Reform Act safe harbors for forward-looking statements provided in section 27A of the Securities Act of 1933 and section 21E of the Securities Exchange Act 1934.

ATTESTATION REPORTS

Under new Item 1506 of Regulation S-K, LAFs and AFs (other than SRCs and EGCs) that are required to provide Scope 1 and/or Scope 2 GHG emissions disclosure pursuant to Item 1505 of Regulation S-K must obtain and attach to filings an attestation report covering the disclosure of its Scope 1 and/or Scope 2 GHG emissions in the relevant filing.

The final rules provide that the attestation report must be provided pursuant to standards that are established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment.

The final rules require that the attestation report be provided pursuant to standards that, in addition to being developed using due process, are either (i) publicly available at no cost, or (ii) widely used for GHG emissions assurance.

The attestation service provider must be an expert in GHG emissions with significant experience in measuring, analyzing, reporting, or attesting to GHG emissions, and independent with respect to the registrant, and any of its affiliates, for whom it is providing the attestation report, during the attestation and professional engagement period. Registrants may use the external auditors who audit their financial statements to prepare the attestation report, however, the fees associated with the attestation engagement would then be deemed “audit-related fees” and be subject to the pre-approval requirements for accountants providing audit services. Registrants must also provide additional disclosures regarding the attestation provider, including, but not limited to, whether the attestation provider is subject to any oversight inspection program, whether the attestation provider resigned or was dismissed, or any disagreements with any former attestation providers.

Under the final rules, the attestation engagement must, at a minimum, be at the following assurance levels for the indicated fiscal year for the required GHG emissions disclosure:

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Type of Registrant	Limited Assurance Level	Reasonable Assurance Level
Large Accelerated Filers	Fiscal years beginning 2029	Fiscal years beginning 2033
Accelerated Filers (non SRCs/EGCs)	Fiscal years beginning 2029	Never

If a registrant not subject to the attestation requirements either (i) chooses to obtain voluntary assurance before required pursuant to the above phase-in timeline, or (ii) is not a LAF or AF but voluntarily chooses to disclose its GHG emissions and to subject its disclosures to third-party assurance, the registrant must comply with the disclosure requirements in Item 1506(e) of Regulation S-K, which requires certain information about, among other things, the service provider, the standards used, and the results of the attestation.

FINANCIAL STATEMENT DISCLOSURES

New Article 14 of Regulation S-X requires a registrant to make disclosures in the notes to its audited financial statements regarding the impact of severe weather events and other natural conditions and transition-related activities.

In describing each severe weather event and other natural condition or transition activity effect on the financial statements, registrants must provide certain contextual information, including a description of significant inputs and assumptions used, judgments made, and other information important to understand the financial statement effect, including policy decisions made to calculate the specific disclosures. As part of this required contextual information, registrants must disclose any recoveries affecting the registrant's financial statements with respect to severe weather events and other natural conditions (and identify where such recoveries are presented in the income statement and balance sheet).

The final rules require:

- disclosure of the capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, subject to applicable one percent and de minimis disclosure thresholds described below;

- separate identification of where the expenditures expensed as incurred and losses are presented on the income statement and where the capitalized costs and charges are presented on the balance sheet;

- disclosure of the capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs if used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals; and

- if the estimates and assumptions a registrant uses to produce the financial statements were materially impacted by risks and uncertainties associated with severe weather events and other natural conditions or any disclosed climate-related targets or transition plans, a qualitative description of how the development of such estimates and assumptions was impacted.

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For these purposes, an expenditure or capitalized cost will be deemed to be incurred as "a result of severe weather events and other natural conditions" if the event or condition is a significant contributing factor in incurring such expense or cost. Although the rules provide several examples of severe weather events and other natural conditions, those examples are not comprehensive. Further, disclosure of a severe weather event or natural condition is not contingent on a determination that such event or condition was caused by climate change.

Disclosure of expenditures must be made if the aggregate amount of expenditures expensed as incurred and losses is equal to or exceeds 1% of the absolute value of income or loss before income tax expense or benefit for the fiscal year, provided, however, that no disclosure is required if the aggregate amount is less than $100,000 for the fiscal year.

Similarly, disclosure of capitalized costs is required if the aggregate amount of capitalized costs and charges incurred is equal to or exceeds 1% of the absolute value of stockholders' equity or deficit at the end of the fiscal year, provided, however, that no disclosure is required if the aggregate amount is less than $500,000 for the fiscal year.

If carbon offsets or RECs are used as a material component of a registrant's plan to achieve its climate-related targets and goals, the registrant must disclose the aggregate amount of capitalized carbon offsets and RECs recognized and the aggregate amount of losses incurred on the capitalized carbon offsets and RECs. Such disclosure is not subject to a 1% disclosure threshold. Registrants will also be required to disclose whether the estimates and assumptions used to produce the consolidated financial statements were materially impacted by risks and uncertainties 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 any such material impacts exist, the registrant must provide a qualitative description of how such estimates and assumption were impacted by such events, conditions, targets, or transition plans.

Registrants will be required to calculate these effects using financial information that is consistent with the scope of the rest of the registrant's consolidated financial statements and apply the same set of accounting principles that it is required to apply in preparation of the rest of its consolidated financial statements. Disclosure must be made for the registrant's most recently completed fiscal year and for historical fiscal years on a prospective basis only. These metrics will be subject to audit by an independent auditor, will fall within the scope of the registrant's internal control over financial reporting, and will be covered by the officer certifications filed as Exhibit 31 to the registrant's annual report on Form 10-K.

PHASE-IN PERIODS FOR COMPLIANCE

The final rules will become effective 60 days after publication in the Federal Register, and compliance will be phased in for all registrants, depending upon the status of the registrant as a LAF, an AF, a non-accelerated filer (NAF), an SRC, or an EGC, and the content of the disclosure. Compliance with the final rules will begin with certain requirements for LAFs beginning with the first annual report on Form 10-K for fiscal years beginning on or after January 1, 2025, and extending out to fiscal year 2033 for reasonable assurance on the attestation reports for LAFs, as summarized in the table below:

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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 as noted in this table	*Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2)*	*Item 1505 (Scopes 1 and 2 GHG emissions)*	*Item 1506 - Limited Assurance*	*Item 1506 - Reasonable Assurance*	*Item 1508 - Inline XBRL tagging for subpart 1500***
LAFs	FYB 2025	FYB 2026	FYB 2026	FYB 2029	FYB 2033	FYB 2026
AFs (other than SRCs and EGCs)	FYB 2026	FYB 2027	FYB 2028	FYB 2031	N/A	FYB 2026
SRCs, EGCs, and NAFs	FYB 2027	FYB 2028	N/A	N/A	N/A	FYB 2027

* As used in this chart, "FYB" refers to any fiscal year beginning in the calendar year listed.
** 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.

LEGAL CHALLENGES TO THE FINAL RULES

Both opponents and proponents of climate rules are challenging the final rules, with lawsuits having already been filed by (i) two private companies in the 5th Circuit Court of Appeals, (ii) a coalition of 10 state attorneys general in the 11th Circuit Court of Appeals, and (iii) environmental groups in the Court of Appeals for the District of Columbia Circuit, with more lawsuits expected to follow. On March 15, 2024, a three-judge panel on the 5th Circuit Court of Appeals temporarily blocked the implementation of the final rules amid litigation challenging the regulations.

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