SEC's Final Climate-Related Disclosure Rules

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Introduction

After much anticipation, on March 6, 2024, the Securities and Exchange Commission ("SEC" or the "Commission") released its final rule—*The Enhancement and Standardization of Climate-Related Disclosures for Investors*[1]—mandating climate-related disclosures by public companies (the "Final Rule"). The Final Rule comes almost two years after the SEC first released its proposed rule (the "Proposed Rule") and follows the submission of over 24,000 comment letters on many of the Proposed Rule's requirements. Significantly, the Final Rule diverges in many key respects from the Proposed Rule—changes which this White Paper will further explore and that are depicted in the table set forth under Annex B—but that has not stopped the legal challenges from flooding in. At the time of publication, nine petitions for review have already been filed in the Second, Fifth, Sixth, Eighth, Eleventh, and D.C. Circuits. On March 21, 2024, the Judicial Panel on Multidistrict Litigation randomly selected the United States Court of Appeals for the Eighth Circuit (the "Eighth Circuit") as the venue in which the consolidated appeals will be litigated. The next day, the United States Court of Appeals for the Fifth Circuit (the "Fifth Circuit") transferred the cases that had been filed in that Court to the Eighth Circuit, and also lifted the temporary administrative stay that it issued against the Final Rule on March 15, 2024. Several of the challengers to the Final Rule have since asked the Eighth Circuit to issue a new stay; as of the time of publication, the Eighth Circuit had not yet ruled on those requests. While it is difficult to predict how the litigation will unfold in the coming weeks and months, this White Paper aims to provide an in-depth overview of the content of the Final Rule, how it may impact registrants and how registrants should consider these developments in light of other regulatory and stakeholder pressures.

In adopting the Final Rule, the SEC points to the need for enhanced and standardized climate-related disclosure practices to provide "more complete and decision-useful information about the impacts of climate-related risks[.]"[2] The Commission asserts the importance to investors of detailed and comparable information regarding the climate-related risks companies face with respect to the increasing occurrence of climate-related natural disasters, various market factors, and regulatory and policy changes driving companies, consumers, and investors toward lower carbon products, practices and services.[3]

The Final Rule mandates the disclosure of climate-related risks (identification, assessment, management, and mitigation of, alongside governance and oversight of); certain greenhouse gas ("GHG") emissions for applicable filers (if material); and a note to the financial statements regarding severe weather events and other natural conditions. Like the Proposed Rule, the Final Rule generally follows the framework of the four pillars of the Task Force on Climate Related Financial Disclosures ("TCFD")—Governance, Strategy, Risk Management, and Metric and Targets—as well as the emissions reporting standards of the Greenhouse Gas Reporting Protocol ("GHG Protocol"). Although the SEC asserts that the TCFD-like components make the Final Rule less burdensome for companies who already report using the TCFD recommendations and/or the GHG Protocol for their emissions, the Final Rule does not perfectly align with either of these frameworks. Even those companies who currently voluntarily disclose in line with the TCFD or other similar voluntary reporting frameworks, and leverage the guidance of the GHG Protocol, will need to familiarize themselves with the Final Rule's requirements and reassess their practices in order to fully comply.

In this White Paper, we provide an overview of the key components of the Final Rule and short analyses of the most critical requirements. We also assess the current state of play regarding the legal challenges to the Final Rule (and potential impacts such judicial delays or modifications may have on compliance obligations) as well as the interplay of the Final Rule with other disclosure regimes, such as the European Union's ("EU") Corporate Sustainability Reporting Directive and California's recently passed

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[1] U.S. Securities and Exchange Comm'n ("SEC"), Final Rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors (Mar. 6, 2024), https://www.sec.gov/files/rules/final/2024/33-11275.pdf [hereinafter SEC Final Rule].
[2] SEC Final Rule, *supra* note 1, at 12.
[3] *See id.* at 19–24.

climate laws. Finally, we note the next steps that companies should take in order to begin preparing their climate-related disclosures for future securities filings from 2026 onward.

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Where, When, and How to Disclose

Applicability

The Final Rule applies to all domestic issuers and foreign private issuers ("FPIs"), including business development companies ("BDCs"), real estate investment trusts ("REITS"), and issuers of registered non-variable insurance contracts, pursuant to a phased-in approach depicted in the table below.[4] The Final Rule applies to smaller reporting companies ("SRCs") and emerging growth companies ("EGCs"), but provides exemptions for those categories of issuers from the disclosure requirements regarding Scope 1 and 2 GHG emissions and extends compliance deadlines.[5] While the Final Rule excludes multijurisdictional system ("MJDS") filers from its requirements, the Final Rule would apply to MJDS filers upon loss of FPI or MJDS status.[6] Asset-backed securities issuers are exempt from the Final Rule's requirements.[7] Finally, in a departure from the Proposed Rule, the Final Rule does not apply to private companies that are parties to business combination transactions involving a securities offering registered on Forms S-4 and F-4.[8]

Where to Disclose

Registrants are required by the Final Rule to provide climate-related disclosure in their Securities Exchange Act of 1934 (the "Exchange Act") annual reports on Form 10-K, as well as their Exchange Act and Securities Act of 1933 ("Securities Act") registration statements on Form 10 and Forms S-1, S-4, and S-11.[9] The Final Rule also requires FPIs to provide such disclosure in their Exchange Act annual reports and registration statements on Form 20-F and their Securities Act registration statements on Form F-1 and Form F-4.[10] The Final Rule does not apply to Forms S-8 and 11-K.[11]

Phased-In Deadlines for Compliance

The Final Rule adopts delayed and staggered compliance dates which vary according to the registrant's filing status. All references to years in the table below mean the year for which registrants must report on pursuant to the relevant requirements of the Final Rule and "fiscal year beginning" means any fiscal year beginning in the calendar year listed. Thus, a Large Accelerated Filer ("LAF") with a December 31 fiscal year-end date must make its first disclosure pursuant to the Final Rule in its Form 10-K for fiscal year ended December 31, 2025, that is filed in March 2026.[12] All disclosures are required to be electronically tagged.[13]

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[4] *Id.* at 566–68, 573.
[5] *Id.* at 571.
[6] *Id.*
[7] *Id.* at 573.
[8] *Id.* at 569.
[9] *Id.* at 566–67.
[10] *Id.* at 567–68.
[11] *Id.* at 569.
[12] *Id.* at 590.
[13] *Id.* at 578.

Registrant Type	Disclosure and Financial Statement Effects Audit		GHG Emissions and Assurance			Electronic Tagging
	All Regulation S-K and S-X disclosures, other than 1502(d)(2), 1502(e)(2), and 1504(c)(2)	*Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2)*	*Scope 1 and Scope 2 GHG Emissions*	*Limited Assurance*	*Reasonable Assurance*	*Inline XBRL Tagging*
Large Accelerated Filers	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 Filers	Fiscal year beginning 2026	Fiscal year beginning 2027	Fiscal year beginning 2028	Fiscal year beginning 2031	N/A	Fiscal year beginning 2026
SRCs, Non-Accelerated Filers and EGCs	Fiscal year beginning 2027	Fiscal year beginning 2028	N/A	N/A	N/A	Fiscal year beginning 2027

Disclosure Placement

The Final Rule, in a departure from the Proposed Rule, allows registrants flexibility on the placement of their climate disclosures within their filings, aside from the financial statement disclosures, which must be included in a note to the financial statements.[14] Accordingly, registrants may provide their climate-related disclosures in a separately captioned, stand-alone "Climate-Related Disclosure" section (as required under the Proposed Rule) of their filings, or they may elect to include the climate-related disclosures throughout the filing in other sections, such as Risk Factors, Description of Business, or Management's Discussion and Analysis of Financial Condition and Results of Operation ("MD&A"). The Final Rule also allows registrants to make such disclosure by incorporating by reference from another SEC filing, as long as the disclosure meets the Final Rule's electronic tagging requirements. Nevertheless, registrants may not incorporate by reference from a proxy statement into a Form 10-K under General Instruction G.3 of Form 10-K the climate-related governance disclosure required by the Final Rule.[15] This is notable as many registrants have historically incorporated governance and risk oversight-related disclosure into their Form 10-Ks by referencing their proxy statements, and will therefore need to consider adding a new section or subsection to their reports for this disclosure as it relates to climate.

Disclosures Are Filed, Not Furnished

Because climate disclosures made pursuant to the Final Rule will be included in periodic reports and registration statements, they must be filed, rather than furnished. This means that filers will be subject to liability under Section 18 of the Exchange Act for making "false or misleading" statements in their disclosures.[16] Further, disclosures mandated to be included in companies' annual reports and financial

[14] *Id.* at 56, 474, 543.
[15] *Id.* at 58.
[16] *Id.* at 584.

statements are subject to officer certifications required by Rules 13a-14 and 15d-14 under the Exchange Act and the attendant liability implications.

The Final Rule, therefore, creates significant potential liability for registrants as compared to information that may have been previously voluntarily provided in sustainability reports or other disclosures that were not filed with the SEC. In fact, the SEC noted in the Final Rule that requiring the disclosures to be filed rather than furnished gives investors the ability to bring suit if registrants fail to comply, can "improve the avenues of redress available to investors in the case of false or misleading statements with respect to material facts and, in turn, provide[s] benefits to investors to the extent they rely on the disclosures required under the Final Rule to make investment or voting decisions."[17] The SEC continued that requiring climate disclosures to be filed "will help promote their accuracy and consistency to the extent registrants seek to avoid liability . . . by taking additional care to ensure that disclosures are accurate."[18]

Forward-Looking Statements and the PSLRA Safe Harbor

Many of the disclosures contemplated by the Final Rule are necessarily predictive and forward-looking, projecting complex climate-related risks and impacts across multiple time horizons.[19] New Item 1507 of Regulation S-K is therefore notable, as it provides that disclosure (other than historic facts) made pursuant to the Final Rule pertaining to transition plans, scenario analysis, internal carbon pricing, and targets and goals constitute "forward-looking statements" for the purposes of the Private Securities Litigation Reform Act ("PSLRA") safe harbor.[20] The Final Rule additionally extends the safe harbor to statements made in connection with certain transactions and disclosures by certain issuers despite these transactions and issuers being otherwise excluded from PSLRA safe harbors, such as for IPOs and SPACs.[21] The Final Rule provides that the PSLRA is applicable to such disclosure because estimates and assumptions based on future events are intrinsically involved in disclosing transition plans, climate risk scenario analyses, internal carbon pricing and targets and goals.[22]

Nevertheless, companies must meet certain conditions to be eligible for the liability safe harbor provided by the PSLRA. Registrants must, among other things, ensure that their forward-looking statements are accompanied by meaningful cautionary language identifying important factors that could cause actual results to differ materially from those stated in the forward-looking statement.[23] The PSLRA safe harbor does not apply to forward-looking statements[24] included in financial statements prepared in accordance with generally accepted accounting principles and any forward-looking statements incorporated by reference from the financial statements into a registrant's Item 1500 disclosures.[25] In declining to adopt a

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[17] *Id.* at 802.
[18] *Id.*
[19] *Id.* at 394.
[20] *Id.* at 394–395.
[21] *Id.* at 398. Statements made in connection with an offering of securities by a blank check company; made with respect to the business or operations of an issuer of penny stock; made in connection with a rollup transaction; or made in connection with an IPO, or in connection with an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program are eligible for the Final Rule's safe harbor for forward-looking statements.
[22] *Id.* at 396.
[23] *Id.* at 401; 15 U.S.C. § 77z-2(c)(1); *see Oklahoma Firefighters Pension & Ret. Sys. v. Six Flags Ent. Corp.*, 58 F.4th 195, 211 (5th Cir. 2023) (observing that cautionary statements "must disclose substantive company-specific warnings based on a realistic description of the risks applicable to the particular circumstances" and rejecting reliance on "boilerplate cautions, unattached to individual forward-looking statements." (internal quotation marks and citation omitted)).
[24] Section 27A(i)(1) of the Securities Act and Section 21B (i)(1) of the Exchange Act define "forward-looking statements" to include: (1) projections of revenues, income (including loss), earnings (including loss) per share, capital expenditures, dividends, capital structure and other financial items; (2) plans and objectives of management for future operations, including those relating to products or services; (3) future economic performance, including discussion and analysis of financial condition by management or in the results of operations; (4) assumptions underlying or relating to the forward-looking statements above; (5) any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer; or (6) projections or estimates of such other items as may be specified by rule or regulation of the SEC.
[25] SEC Final Rule, *supra* note 1, at 400–401.

safe harbor for the financial statement disclosures, the SEC asserted that narrowing the scope of financial statement disclosures to cost and expenditures already captured in companies' books and records meant a safe harbor for financial statement disclosures was neither necessary nor appropriate.[26] Further, the PSLRA safe harbor is only available to the extent a court views a particular statement as forward-looking, which a court may be less inclined to do in cases alleging fraud due to the non-disclosure of a climate-related risk or based on a registrant's characterization of its current efforts to mitigate climate-related risks. And, perhaps most importantly, the PSLRA does not limit the SEC's authority to bring enforcement actions regarding forward-looking statements.

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What to Disclose

The Final Rule introduces Subpart 1500 to Regulation S-K and Article 14 to Regulation S-X. Though the Final Rule qualifies certain disclosure requirements based on materiality, it still incorporates line-item requirements that must be disclosed regardless of materiality (*e.g.*, the board's oversight of climate-related risks, if applicable).

A Note on Materiality

The SEC sought to make the Final Rule less prescriptive than the Proposed Rule[27] by tying certain disclosure requirements to traditional concepts of materiality, a basic tenet underpinning U.S. securities laws defined in the seminal U.S. Supreme Court cases of *Basic v. Levinson* and *TSC Industries v. Northway*.[28] Accordingly, the Final Rule incorporates materiality qualifiers whereby disclosure of certain climate-related matters[29] is only required where there may be a substantial likelihood that a reasonable investor would consider the disclosure important when determining whether to buy or sell securities or how to vote, or where a reasonable investor would view omission of the disclosure as having significantly altered the total mix of information made available. Such materiality determinations are registrant- and fact-specific and require registrants to evaluate both qualitative and quantitative considerations.

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[26] *Id.* at 550.

[27] The SEC likely pivoted from many of the more prescriptive components of the Proposed Rule to better position the Final Rule for inevitable legal challenges. By tying certain disclosures to traditional notions of materiality, the SEC may be on stronger footing and more in line with its mission to protect investors and maintain fair, orderly and efficient markets while balancing the facilitation of capital formation.

[28] *TSC Industries v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (an omitted fact is "material" if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."); *see Basic, Inc. v. Levinson*, 485 U.S. 224 (1988) (information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision).

[29] See, *e.g.*, 17 C.F.R. § 229.1502(a) ("Describe any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its strategy, results of operations, or financial condition."); § 229.1502(d)(2) ("Describe quantitatively and qualitatively the material expenditures incurred and material impacts on financial estimates and assumptions . . . ."); § 229.1502(e)(1) ("If a registrant has adopted a transition plan to manage a material transition risk, describe the plan."); § 229.1502(f) ("If a registrant uses scenario analysis to assess the impact of climate-related risks on its business, results of operations, or financial condition, and if, based on the results of such scenario analysis, the registrant 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 describe each such scenario . . . ."); § 229.1502(g)(1) ("If a registrant's use of an internal carbon price is material to how it evaluates and manages a climate-related risk identified in response to paragraph (a) of this section, disclose . . . ."); § 229.1503(a) ("Describe any processes the registrant has for identifying, assessing, and managing material climate-related risks."); § 229.1504(a) ("A registrant must 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."); § 229.1505(a)(1) ("A registrant that is a large accelerated filer or an accelerated filer…must disclose its Scope 1 emissions and/or its Scope 2 emissions, if such emissions are material . . . .").

While the addition of materiality qualifiers make certain disclosure requirements under the Final Rule less prescriptive, injecting materiality into the climate context raises significant questions, including what the definition of a "reasonable investor" is in the climate context[30] and what types of climate-related disclosures would provide decision-useful information to such "reasonable investors."

As described below in the *EU's Corporate Sustainability Reporting Directive* section, materiality in the U.S. securities law context is not premised on the concept of "double materiality" and risks to external interests (such as society or the planet) are not considered as part of the analysis. Nonetheless, determining which climate-related issues are important to a given business is inherently challenging, especially when different investors consider returns to their investments over varying time horizons. What may be a reasonable business decision with tolerable risks over the near term to an actively managed investment fund may be viewed critically by certain investors (like passive index asset managers) who believe risks, such as physical or transition risks of climate change, should be evaluated over longer time horizons in line with international agreements such as the Paris Agreement. Adding further complexity to this line of inquiry is the fact that securities laws and SEC guidance predating the Final Rule already require disclosure of material risks to a registrant's business.[31]

The integration of materiality qualifiers throughout the Final Rule will require registrants to assess whether certain disclosure is required. Should the Final Rule survive court challenges, registrants will be well advised to document their determinations of how and whether specific issues were or were not deemed to be material, as it can be anticipated that this will be highly scrutinized by the SEC's enforcement division and private litigants alike.

Registrants will generally be required to disclose information regarding the following subjects:

Climate-Related Risk Governance (Item 1501)

Section	Requirements
Item 1501 – Governance (§ 229.1501)	Describe the board of directors' (the "board") oversight over climate-related risks.
	Describe management's role in assessing and managing the registrant's ***material*** climate-related risks.

Registrants will be required to include disclosures about their governance of climate-related risks pursuant to the Final Rule. The Final Rule requires disclosure, as applicable, of the board's oversight of climate-related risk, including the identity of any board committee or subcommittee that oversees climate-related risks, the processes by which the board or such committees are informed about climate-related risks, and certain information on the board's oversight of progress against climate-related targets, goals, or transition plans, if applicable. The Final Rule also requires disclosure, as applicable, of 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 these matters, the relevant expertise of such positions or committees, the processes 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 or its committees. In the adopting release, the SEC emphasized that its Final Rule is not intended to influence

[30] Commissioners dissenting to the Final Rule have noted that the Commission labeling asset managers "investors" is potentially a problematic characterization, perhaps opening the door to future arguments where the prerogatives of asset managers (and their proxy voting teams), who have largely been driving the demand for GHG emissions disclosures from public companies, do not necessarily reflect "reasonable investor" interests. *See* Commissioner Hester M. Peirce, Green Regs and Spam: Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors, U.S. Sec. & Exch. Comm'n (Mar. 6, 2023), https://www.sec.gov/news/statement/peirce-statement-mandatory-climate-risk-disclosures-030624.

[31] Critics have argued that the Final Rule is superfluous since registrants are already required to disclose climate-related matters (under the SEC's 2010 climate guidance or otherwise) to the extent a risk is material. *Id.* at 40-42. Critics further assert that these new rules simply are a reporting burden in search of a problem that does not exist. Proponents of the Final Rule would counter that climate issues clearly are of high interest and demand to investors, and the existing materiality rules are not eliciting the consistent, decision useful disclosures that investors are seeking; hence the requirement for new and more detailed climate-related disclosure rules.

registrants' decisions about how to manage climate-related risks or design their governance structures.[32] Accordingly, the SEC notes that disclosures related to Item 1501 are not required for registrants that do not exercise oversight of climate-related risks.[33]

Board Oversight

The Final Rule requires disclosure on whether and how the board oversees progress against climate-related targets, goals, or transition plans, but ***only if*** such targets, goals, or plans are disclosed pursuant to Item 1502(e)(1) of the Final Rule (Strategy). The Final Rule does away with several of the prescriptive requirements included in the Proposed Rule: Registrants will ***not*** be required to disclose whether any director has expertise in climate-related risks and the nature of such expertise, the identity of specific board members responsible for climate risk oversight (just any applicable committees or subcommittees), how frequently the board is informed about climate-related risks, and information about whether and how the board sets climate-related targets or goals, including interim targets or goals.[34]

Management's Role

The Final Rule, like the Proposed Rule, requires disclosure of management's role in assessing and managing climate-related risk (if applicable), but limits such disclosure to assessing and managing ***material*** climate-related risks given the breadth of climate-related matters that may be overseen by management at a given registrant.[35] The Final Rule also still requires registrants to disclose, as applicable, the relevant expertise of any relevant members of management (similar to the SEC's final rules on cybersecurity disclosure). The Final Rule also provides examples of what may constitute relevant management experience: prior work experience in climate-related matters, relevant degrees or certifications, or any knowledge, skills, or other background in climate-related matters.[36]

Strategy (Item 1502)

Section	Requirements
Item 1502 – Strategy (§ 229.1502)	Describe any climate-related risks that have ***materially*** impacted or are reasonably likely to have a ***material*** impact on the registrant, including on its strategy, results of operation, or financial condition over the short-term (*i.e.*, the next 12 months) or long-term (*i.e.*, beyond the next 12 months).
	Disclose whether each such risk is physical or transition risk, providing the information necessary to understand the nature of the risk presented and the extent of the registrant's exposure to the risk.
	Describe the actual and potential ***material*** impacts of any climate-related risk identified above on the registrant's strategy, business model, and outlook.
	Discuss whether and how the registrant considers any impacts described above as part of its strategy, financial planning, and capital allocation.
	Discuss how any climate-related risks have ***materially*** impacted or are reasonably likely to ***materially*** impact the registrant's business, results of operations, or financial condition.
	Describe quantitatively and qualitatively the ***material*** expenditures incurred and material impacts on financial estimates and assumptions that directly result from activities to mitigate or adapt to climate-related risks.

[32] SEC Final Rule, *supra* note 1, at 168.
[33] *Id.* at 169.
[34] *Id.*
[35] *Id.* at 170.
[36] *Id.* at 181, n.711.

Section	Requirements
	If the registrant has adopted a transition plan to manage ***material*** transition risk, make certain disclosure.
	If the registrant uses scenario analysis to assess the impact of climate-related risks on its business, results of operations, or financial condition and ***if***, based on the results of such scenario analysis, the registrant determines that such risk is reasonably likely to have a ***material*** impact on its business, results of operations, or financial condition, make certain disclosure.
	If a registrant's use of an internal carbon price is ***material*** to how it evaluates and manages climate-related risks, make certain disclosure.

Description of Climate-Related Risks

The SEC notes in the Final Rule that general risk factor provisions regarding climate have not provided investors with a sufficient level of detail to be useful for investment or voting decisions, and the Final Rule aims to respond to this investor need.[37] Therefore, pursuant to Item 1502(a), registrants will be required to identify any climate-related risks that have ***materially*** impacted or are reasonably likely to have a ***material*** impact on their strategy, results of operations, or financial condition.[38]

The Final Rule requires that the description of climate-related risks include delineations based on whether each identified risk is a "transition" risk (*i.e.*, relating to the potential transition to a lower-carbon economy) or a "physical" risk (*i.e.*, relating to the physical impacts of the climate), as well as whether such 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 the next 12 months).[39] This marks a shift from the Proposed Rule, which would have required registrants to disclose how they define certain time horizons, and aligns the Final Rule more closely to the temporal standard under the MD&A.[40]

Transition Risks

For transition risks, registrants are required to describe (1) whether the risk relates to regulatory, technological, market (such as changing consumer, business counterparty, or investor preferences), or other transition-related factors; and (2) how those factors impact the registrant.[41]

Physical Risks

For physical risks, registrants will need to disclose (1) whether the risk is "chronic" (i.e., related to longer-term weather patterns and related effects) or "acute" (*i.e.*, driven by shorter-term severe weather events, such as hurricanes, floods, tornadoes, and wildfires); and (2) the geographic location of the properties, processes, or operations subject to the risk.[42] Examples of chronic physical risks include sustained higher temperatures, sea level rise, and drought, while effects related to those physical risks include decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water.[43] The Final Rule references severe events without specifically discussing the influence of climate change on such events, meaning that registrants are likely expected to treat all severe weather exposure

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[37] *Id.* at 89–90.
[38] *Id.* at 853-854 (§ 229.1502(a)).
[39] *Id.* at 27, 74 (§ 229.1502(a)).
[40] *Id.*
[41] *Id.* at 103.
[42] *Id.* at 92 (§ 229.1502(a)(1)–(2)).
[43] *Id.*

as physical climate risk exposure, rather than attempt to parse out which severe weather events are climate-driven.[44]

Unlike the Proposed Rule, the Final Rule does not require disclosure of the zip code or other subnational postal code in which such properties, processes, or operations are located. Further, the Final Rule does not require registrants to discuss certain highly granular information called for under the Proposed Rule regarding assets located in flood hazard areas and regions of high water stress, nor the interaction of related physical risk. Nevertheless, the Final Rule does provide that if a registrant has significant operations in a jurisdiction that has made a GHG emissions reduction commitment, it should consider whether it may be exposed to a related material transition risk.[45]

Value Chains

In further contrast to the Proposed Rule, the Final Rule removes references to impacts on registrants' value chains from the definitions of "climate-related risk" and "transition risk" to limit the need for registrants to request input from third parties, as well as the burden on such third parties. Registrants, therefore, will only need to disclose climate-related risk involving their value chain if such risk has materially impacted or is reasonably likely to materially impact the registrant's business, results of operations, or financial condition. Similarly, the definitions of "acute" and "chronic" (further discussed above) do not include the operations of those with whom a registrant does business.

Impacts of Climate-Related Risks on Strategy, Business Model, and Outlook

Pursuant to the Final Rule, registrants are required to describe the ***material*** impacts of their identified climate-related risks on (1) their business operations, including the type and locations of such operations; (2) their products or services; (3) their suppliers, purchasers, or counterparties to material contracts (to the extent known or reasonably available); (4) activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes; and (5) expenditures for research and development.[46] If none of the aforementioned items are material to a given registrant, it need not disclose them, but conversely, if a registrant has identified a material impact that is not included in the list, it will still need to disclose such impact.[47] Note that the Final Rule removed the reference to "value chain" with respect to suppliers and other third parties and added qualifying language to this item in an attempt to limit the scope of this topic and reduce the burden upon registrants.[48]

Registrants are also required to discuss how they consider any identified impacts in their strategy, financial planning, and capital allocation, including, as applicable (1) whether the impacts of the identified climate-related risks have been integrated into the registrant's business model or strategy, including whether and how resources are being used to mitigate climate-related risks; and (2) how the registrant's targets or transition plans referenced in Item 1502(e) (requirement to disclose the quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of a transition plan disclosed pursuant to the Final Rule) of Regulation S-K relate to the registrant's business model or strategy.[49]

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[44] The Final Rule, unlike the Proposed Rule, uses the term "severe" to describe weather events in both Regulation S-K and Regulation S-X, creating alignment between the disclosure requirements discussed in further detail in the *Financial Statement Disclosures* section.
[45] *Id.* at 854 (§ 229.1502(c)).
[46] *Id.* at 854–855 (§ 229.1502(b)).
[47] *Id.* at 116.
[48] *Id.* at 117.
[49] *Id.*

Registrants must also discuss how climate-related risks have ***materially*** impacted or are reasonably likely to ***materially*** impact the registrant's business, results of operation, and financial condition.[50] In addition to adding materiality qualifiers, Item 1502 of the Final Rule departs from the Proposed Rule in using the phrase "business, results of operations, and financial condition" to clarify that the SEC is seeking a discussion of the financial effects of climate-related risks similar to the MD&A, rather than the notes to the financial statements, in response to this requirement.[51]

The Final Rule also requires registrants to disclose, quantitatively and qualitatively, the actual material expenditures that they have incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from activities disclosed as material impacts on activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes.[52] In response to this disclosure requirement, registrants may need to update their disclosure controls and procedures to provide for proper tracking and reporting of such expenditures and impacts—for this reason, registrants are given additional time to prepare for this disclosure, as reflected in the *Phased-In Deadlines for Compliance* table above.[53]

Disclose It if You Have It Requirements

Similar to the Proposed Rule, the Final Rule requires registrants to make certain disclosure if they have certain climate-related plans and processes in place. However, as noted in the Forward-Looking Statements and the PSLRA Safe Harbor section above, disclosure made pursuant to these requirements will be subject to a safe harbor.

Transition Plans

The Final Rule requires registrants that have developed strategy and implementation plans to reduce climate-related risks (*i.e.*, a "transition plan") to provide disclosure regarding such plans if they were adopted to manage ***material*** transition risk. Unlike the Proposed Rule, the Final Rule does not require disclosure of plans to address physical risk under Item 1502.[54] Pursuant to the Final Rule, transition plans may include plans to reduce GHG emissions in line with the registrant's own commitments or the commitments of jurisdictions in which the registrant has significant operations.[55] If registrants have adopted transition plans, the Final Rule requires descriptions of such plans (though it does not list the types of transition risks and factors related to such risks that must be disclosed, if applicable), as well as annual updates about actions taken under such plans, including how such actions have affected the applicable registrant's business, results of operations, or financial condition.[56]

Registrants must provide quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the transition plans disclosed under these requirements.[57] Given the similarity between this requirement and Item 1502(d) (requirement to disclose the quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from the registrant's activities to mitigate or adapt to climate-related risks), the Final Rule provides that companies need not repeat overlapping disclosure in response to this requirement.[58] Similar to Item 1502(d) disclosure, registrants may need to update their disclosure controls and procedures to provide for proper

[50] *Id.* at 855 (§ 229.1502(d)).
[51] *Id.* at 120–21.
[52] *Id.* at 854 (§ 229.1502(b)(4)).
[53] *Id.* at 124–25. This requirement was substituted in the Final Rule for the proposed requirement that registrants discuss the financial statement metrics that they disclosed pursuant to Article 14 of Regulation S-X. *Id.* at 121–22.
[54] *Id.* at 138.
[55] *Id.* at 131–32 (§ 229.1502(e)(1)).
[56] *Id.* at 133–134; 855 (§ 229.1502(e)(1)).
[57] *Id.* at 855 (§ 229.1502(e)(1)). Note that unlike Item 1502(d), this requirement is not qualified with a reference to management's assessment.
[58] *Id.* at 136.

tracking and reporting of such expenditures and impacts. The Final Rule accommodates registrants with additional time to prepare for the new disclosure, as reflected in the *Phased-In Deadlines for Compliance* table above.[59]

Climate Scenario Analyses

Under the Final Rule, registrants that use scenario analysis to assess the impacts of climate-related risks on their business, results of operations, or financial condition and determine that a climate-related risk is reasonably likely to have a ***material*** impact on their business, results of operations, or financial condition based on the results of such analysis, must make certain disclosures regarding each scenario analyzed. Such disclosure includes ***brief*** descriptions of the parameters, assumptions, and analytical choices used for each scenario, as well as the expected material impacts (including financial impacts) on the registrant under each scenario.[60] The Final Rule, unlike the Proposed Rule, does not call for both quantitative and qualitative information in this disclosure, though the SEC does state in the Final Rule that as a registrant's use of scenario analysis becomes more sophisticated, it would expect its disclosure to become more quantitative.[61] Note that the Final Rule, in contrast to the Proposed Rule, does not require disclosure regarding the resiliency of a registrant's business strategy in light of future changes in climate-related risks nor *any* analytical tools used to assess the impact of climate-related risks.

Carbon Pricing

If a registrant uses internal carbon prices that are ***material*** to how it evaluates and manages climate-related risks identified pursuant to the Final Rule, the registrant will be required to disclose for each internal carbon price (1) the price of carbon, (2) how the total price is estimated to change over time, and (3) if the scope of entities and operations involved in the use of an internal carbon price disclosed pursuant to this requirement is materially different from the organizational boundaries used for the purpose of calculating GHG emissions pursuant to Item 1505 of the Final Rule, a brief description of the difference.[62]

Climate-Related Risk Management (Item 1503)

Section	Requirements
Item 1503 – Risk Management (§ 229.1503)	Describe any processes the registrant has for identifying, assessing, and managing ***material*** climate-related risks.
	If managing a ***material*** climate-related risk, disclose whether and how any such processes have been integrated into the registrant's overall risk management system or processes.

The Final Rule requires registrants to describe any processes that they have for identifying, assessing, and managing ***material*** climate-related risks, and in so doing, addressing, as applicable, how each registrant (1) identifies whether it has incurred or is reasonably likely to incur a ***material*** physical or transition risk, (2) decides whether to mitigate, accept, or adapt to the particular risk, and (3) prioritizes whether to address the climate-related risk.[63] Further, registrants managing a ***material*** climate-related risk must disclose whether and how any such processes described pursuant to this section have been integrated into their overall risk management system or processes.[64]

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[59] *Id.* at 150.
[60] *Id.* at 856 (§ 229.1502(f)).
[61] *Id.*
[62] *Id.* at 856 (§ 229.1502(g)). In addition to adding materiality qualifiers, the Final Rule differs from the Proposed Rule by cutting the disclosure requirements regarding the rationale for selecting the internal carbon price, how the internal carbon price is used to evaluate and manage climate-related risk, and the boundaries for measurement if different from the GHG emissions organizational boundary disclosed pursuant to Item 1504. *Id.* at 158-159.
[63] *Id.* at 857 (§ 229.1503(a)).
[64] *Id.*

The Final Rule takes a less prescriptive approach than the Proposed Rule with respect to risk management disclosure, allowing companies to tailor their disclosure of ***material*** climate-related risks specific to their industry and their facts and circumstances.[65] Companies will have flexibility to determine which factors are most significant to them in identifying, assessing and managing climate-related risks.[66] The Final Rule also aligns closely with the TCFD recommendation on risk management, allowing companies to leverage their voluntary reporting when drafting disclosures.[67]

Because the Final Rule breaks down climate-related risks into physical risk and transition risk for the purposes of identifying whether a material risk has or is reasonably likely to occur, companies may determine that they are subject to only material physical risks and not material transition risks, or vice-versa, further allowing companies to tailor such disclosures to their particular circumstances.[68]

The Final Rule does away with the more prescriptive elements of the Proposed Rule, including separate disclosure on how a registrant determines the mitigation of its high priority risks.[69] Furthermore, the Final Rule eliminates the requirement for companies to disclose how separate board or management committees responsible for assessing and managing climate-related risks interact with the board or management committee governing risks.[70] The SEC acknowledged that many commenters do not have dedicated board or management committees and expressed concerns around boilerplate disclosures due to overly prescriptive requirements.[71]

Targets and Goals (Item 1504)

Section	Requirements
Item 1504 – Targets and Goals (§ 229.1504)	Disclose any ***material*** climate-related target or goal, including any information necessary to understand the material impact or reasonably likely material impact of the target or goal.
	Disclose any progress made toward meeting the target or goal and how any such progress has been achieved and provide updates each fiscal year by describing the actions taken during the year to achieve the targets or goals.
	If carbon offsets or RECs have been used as a ***material*** component of a registrant's plan to achieve climate-related targets or goals, disclose certain information.

A registrant must disclose any climate-related targets or goals—either internally or publicly announced—that have ***materially*** affected or are reasonably likely to materially affect the registrant's business.[72] The disclosures required under Item 1504, however, may be included as part of the disclosures responsive to Items 1502 (Strategy) and 1503 (Risk Management), in an effort to reduce redundancies in the required disclosures and lessen the compliance burden on registrants.[73]

In addition to disclosing the specific target or goal, the registrant is required to provide any additional information necessary to understand the material impact or reasonably likely material impact of the target or goal. The Final Rule provides a non-exclusive list of examples that, if applicable, may be necessary to an understanding of the material impacts of the target or goal, including:

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[65] *Id.* at 192.
[66] *Id.*
[67] *Id.* at 195.
[68] *Id.* at 196.
[69] *Id.* at 194-195. Likewise, under the Final Rule, companies no longer need to disclose the relative significance of climate-related risks to other risks, or consider a list of factors, such as regulatory requirements or policies, counterparty preferences, technological changes or changes in market prices, unless the registrant deems such factors to be material climate-related risks specific to its facts and circumstances. *Id.*
[70] *Id.* at 198.
[71] *Id.*
[72] *Id.* at 857 (§ 229.1504(a)).
[73] *Id.*

- 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, and 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;
- How the registrant intends to meet its climate related targets or goals.[74]

Along with the initial required disclosure of targets and goals, registrants are required to update these disclosures annually to identify any progress made towards the target or goal, what actions were taken during the year to achieve the target or goal, and 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 towards the same.[75] This requirement includes a quantitative and qualitative disclosure of material expenditures and material impacts on financial estimates as a result of the target or goal, if they are material in the aggregate.[76]

In addition, if a registrant has used carbon offsets or RECs as a material *component* of its plan to meet a climate-related target or goal, it must disclose specific information about the source, value, underlying projects, and authentication of the carbon offsets or RECs.[77] Under a strict reading of the Final Rule, if RECs or carbon offsets are a material component of a climate-related target or goal, then disclosure is required regardless of the materiality of the target or goal itself. The SEC emphasizes transparency with respect to a registrant's use of offsets and RECs, and their effectiveness as a part of a transition risk strategy or climate-risk management plan. In requiring information on the use of carbon offsets and RECs, the SEC seems to be seeking to address the concerns of several commentators—specifically, that many registrants use such instruments inconsistently and in ways that are misleading to investors or other relevant audiences, that such offsets used are of dubious quality, and that the use of RECs or offsets may result in "greenwashing" risks to registrants.[78]

Unlike the Proposed Rule, which required disclosure of *any* climate-related targets or goals, even those at the most preliminary stages, the Final Rule only requires disclosure of those climate-related targets and goals that are material. By narrowing the reach of this requirement, the SEC sought to address commenters' concerns that the disclosure requirements would disincentivize registrants from setting climate-related targets and goals or even having preliminary discussions about future targets and goals.[79]

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[74] *Id.* at 857–58 (§ 229.1504(b)).
[75] *Id.* at 214–16.
[76] *Id.* at 217.
[77] *Id.* at 858 (§ 229.1504(d)).
[78] *Id.* at 208.
[79] The Final Rule does not provide a prescriptive list of information that must be disclosed regarding material targets and goals, and two of the proposed requirements—that the registrant disclose whether a target is absolute or intensity based and any interim targets set by the registrant—are not included in the Final Rule at all, based on the SEC's conclusion that this information would likely be elicited by other required disclosures if applicable to a registrant. *Id.* at 214–15.

GHG Emissions Disclosures (Item 1505)

Section	Requirements
Item 1505 – GHG Emissions Disclosure (§ 229.1505)	For large accelerated filers ("LAFs") and accelerated filers ("AFs"), disclose Scope 1 emissions and/or its Scope 2 emissions, if such emissions are ***material***, for its 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 in the filing.
	If required to be disclosed, GHG emissions must be disclosed in the manner prescribed by the Final Rule.
	Describe the methodology, significant inputs, and significant assumptions used to calculate the registrant's GHG emissions.

The Final Rule represents a significantly pared back form of the GHG emissions disclosure requirements compared to the Proposed Rule. Perhaps most notably, Scope 3 GHG emissions—those indirect emissions from all upstream and downstream activities in a registrant's value chain—have been excluded from the Final Rule. Scope 3 GHG emissions were an area of some of the most vociferous opposition from commenters, as well as an area most ripe for significant judicial challenges alleging the SEC had overstepped its mandate, because reporting of Scope 3 GHG emissions indirectly imposes reporting burdens on companies that are not registrants but who are in the value chain of a public company. With respect to the exclusion, the SEC acknowledged the potential costs and difficulties related to Scope 3 GHG emissions reporting and data—Scope 3 GHG emissions are widely regarded as the most difficult category of emissions to quantify, with acceptable calculation methodologies continuing to evolve all the time.

The Proposed Rule would have required disclosure of Scope 1 and Scope 2 GHG emissions by all registrants regardless of materiality. The Final Rule only obligates LAFs and AFs to disclose their Scope 1 and Scope 2 GHG emissions, on a phased-in basis, if they are material.80 LAFs and AFs must present the requisite emission disclosures for the most recently completed fiscal year and for the historical fiscal years in their consolidated financial statements in the filing.[81] Importantly, SRCs and EGCs are exempt from the GHG emissions disclosure requirements under Item 1505. In excluding these registrants from the GHG emissions disclosure requirements, the SEC acknowledged the disproportionate compliance burden on smaller registrants and the variability of existing levels of climate-related disclosure between large and small companies.[82]

Scope 1 and Scope 2 Emissions and Materiality

Only LAFs and AFs will be required to disclose their Scope 1 and Scope 2 GHG emissions if material. Scope 1 GHG emissions are direct emissions from operations owned or controlled by the registrant,[83] while Scope 2 GHG emissions are indirect emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant.[84] The amount of a registrant's Scope 1 and Scope 2 GHG emissions does not determine materiality.[85] Under what circumstances a registrant's Scope 1 and Scope 2 GHG emissions could be deemed "material" to a "reasonable investor"[86] will likely be subject to debate.

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[80] *Id.* at 858 (§ 229.1505(a)).
[81] *Id.* at 860 (§ 229.1505(c)).
[82] *Id.* at 687.
[83] *Id.* at 850 (§ 229.1500).
[84] *Id.*
[85] *Id.* at 246.
[86] Commissioner Hester Peirce, in her dissenting statement, asserted that the Commission labeling asset managers "investors" is potentially a problematic characterization, perhaps opening the door to future arguments where the prerogatives of asset managers

The SEC's reasoning implies that irrespective of whether a registrant believes that its Scope 1 and 2 GHG emissions are, in and of themselves, significant to its current business operations, the mere fact that such emissions might be mandated to be disclosed under the SEC's or another jurisdiction's regulations, could be reasonably likely to cause them to be subject to additional regulatory burdens through increased taxes or financial penalties.[87] In such cases, through a circular argument, such Scope 1 and Scope 2 GHG emissions could pose a transition risk and may, or may become, material to the registrant, with the disclosure of such emissions a self-fulfilling prophecy.

The SEC acknowledges that LAFs and AFs may incur initial compliance costs to assess and monitor their emissions just so that they can make the threshold materiality determination, in particular if they are not already tracking such information internally.[88]

Methodology and Assumptions

Consistent with the Final Rule, a registrant that is required to disclose its Scope 1 and 2 GHG emissions must disclose the emissions in gross terms and exclude the impact of any purchased or generated offsets.[89] Notably, if any constituent gas is material, the LAF or AF must disclose that constituent gas disaggregated from the other gases.[90]

Although the SEC does not prescribe any particular methodology to calculate GHG emissions, registrants are nevertheless required to describe their chosen methodology, including a brief description, in sufficient detail for a reasonable investor to understand, of the operational boundaries used and the protocol or standard used to report the GHG emissions,[91] alongside a description of any significant input or assumptions informing the calculation.

Organizational Boundaries

Although registrants are required to disclose the "organizational boundary" used when calculating Scope 1 and Scope 2 GHG emissions (and to describe the method used to determine the boundary), they are not required to use the same organizational boundary applied to the scope of entities and operations included in the consolidated financial statements. An organizational boundary determines what a registrant will include—business operations owned or controlled—in the calculation of its GHG emissions. If the organizational boundaries used in the two instances "materially differ," the registrant must provide a brief explanation with enough detail for a reasonable investor to understand the difference.[92] The Final Rule highlights the flexibility that this allows registrants; for example, registrants that already make voluntary disclosures consistent with the "equity" or "control" approaches for determining organizational boundaries pursuant to the GHG Protocol (or any similar reporting framework), can continue the same approach under the Final Rule so long as they provide sufficient description of the method used to determine the organizational boundaries.[93]

(and their proxy voting teams), who have largely been driving the demand for GHG emissions disclosures from public companies, do not necessarily reflect "reasonable investor" interests.

[87] SEC Final Rule, *supra* note 1, at 246. Such disclosures of Scope 1 and Scope 2 GHG emissions, presumably, could also cause reputational or other impacts to a registrant, which could also rise to the level of materiality.

[88] *Id.* at 248.

[89] *Id.* at 250.

[90] *Id.* at 249.

[91] *Id.* at 860 (§ 229.1505(b)).

[92] *Id.* at 252.

[93] *Id.* Under the GHG Protocol's "equity" approach, a company accounts for GHG emissions from operations reflective of its share of equity in an operation. By contrast, under the "control" approach, a company accounts for all *GHG* emissions (*i.e.*, 100 percent) from operations over which it exerts control. *See* World Bus, Council for Sustainable Dev. & World Res. Inst., *The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard* 16–18 (rev. ed. 2004), https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf.

A registrant's description of its boundary must also include the approach it has taken to the categorization of emissions and emissions sources.[94]

Protocol or Standard Used

The Final Rule requires a registrant subject to disclosure of Scope 1 and 2 GHG emissions to provide a brief description of the protocol or standard it has used to report its emissions.[95] This should include the calculation approach and any calculation tools used, as well was the type and source of any emission factors used.[96] Registrants may disclose whether their approach is pursuant to an EPA regulation, the Corporate Accounting and Reporting Standard of the GHG Protocol, an ISO standard, or another applicable standard/protocol.[97] For Scope 2 GHG emissions specifically, the Commission expects a registrant to disclose what particular method it has used, such as a location-based method, or a market-based method, or both.[98] These concepts are drawn from the GHG Protocol. Disclosure of GHG emissions is not required in terms of intensity[99] and, like the Proposed Rule, a registrant may use reasonable estimates for its emissions, as long as it describes the assumptions underlying such estimates and its rationale.[100]

Notwithstanding the flexibility with respect to a registrant's selection of a GHG emission reporting methodology, there are some practical limits on the ability to leverage existing GHG reporting data required by regulations, such as the EPA GHG Reporting Program. For example, the EPA program does not address emissions from non-U.S. facilities, and so certain companies with large international footprints could find themselves still facing increased data-gathering burdens with respect to GHG emissions. Also, given how the Commission has stressed consistency in reporting, and the prevalence of the GHG Protocol in other emissions reporting regimes (see below for a discussion of California and EU reporting requirements) and among climate-focused stakeholders, it remains to be seen how the SEC will ultimately scrutinize emissions data based solely on regulatory reporting requirements.

Timing

Recognizing the difficulty that some registrants may have to measure and report their year-end GHG emissions by the annual report deadline, the Final Rule provides that any GHG emissions disclosed pursuant to Item 1505 may be incorporated by reference from the registrant's Q2 10-Q in the fiscal year immediately following the year to which the GHG emissions relate.[101] Comparable treatment is provided for foreign private issuers.[102]

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[94] SEC Final Rule, *supra* note 1, at 253.
[95] *Id.*
[96] *Id.*
[97] *Id.* at 253–54.
[98] *Id.* at 254.
[99] *Id.*
[100] *Id.*
[101] *Id.* at 259.
[102] *Id.* at 260.

GHG Emissions Attestation Reports (Item 1506)

Section	Requirements
Item 1506 – Attestation of Scope 1 and Scope 2 Emissions Disclosure (§ 229.1506)	***If*** a registrant is required to provide Scope 1 and/or Scope 2 GHG emissions disclosure, include an attestation report covering such disclosure in the relevant filing, subject to several provisions.
	Attestation report must be provided pursuant to standards that are publicly available at no cost or widely used for GHG emissions assurance and established by a body or group that has followed due process procedures.
	Attestation report must be prepared by and signed by a GHG emissions attestation provider that meets certain requirements.
	LAFs and AFs must disclose, alongside the GHG emissions disclosure to which the attestation report relates, certain information regarding the GHG emissions attestation provider.
	If a registrant that is not required to include a GHG emissions attestation report pursuant to the Final Rule voluntarily obtains assurance, disclose certain information.

The Final Rule requires AFs and LAFs, including FPIs, to include in each covered filing an attestation report that provides "limited assurance" for Scope 1 and Scope 2 GHG emissions disclosures, with the requirement scaling up to "reasonable assurance" for LAFs after a specified transition period. The SEC characterizes these rules as "minimum" requirements, meaning that registrants may provide attestation in excess of the requirements, *e.g.*, providing reasonable assurance earlier than required under Item 1506 or obtaining assurance for voluntary emissions disclosures. For such voluntary attestations, certain disclosure requirements apply, see Voluntary Reports below.

GHG Emissions Attestation Provider

The Final Rule adopts substantially similar requirements regarding GHG emissions attestation providers as the Proposed Rule, and is largely based on a principles-based approach. Specifically, this approach, per the SEC, allows registrants to have some degree of flexibility in hiring a GHG emissions attestation provider. Notably, the Final Rule retains the independence requirements for emissions attestation providers. An emissions attestation provider is not independent if, "such attestation provider is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that such attestation provider is not, capable of exercising objective and impartial judgment on all issues encompassed within the attestation provider's engagement."[103] Registrants will need to evaluate the provision of services and any other relationships they have with the attestation provider to determine whether the attestation provider would be providing assurance on their own work, or acting as management or an employee of the registrant or its affiliates or as an advocate for the registrant.[104]

Importantly, the Final Rule amends Rule 436 to provide that attestation providers providing a GHG emissions attestation report at a limited assurance level, for Scope 1, 2, or 3 GHG emissions, are not deemed "experts" for purposes of liability for their attestation conclusions or opinions under the Securities Act.[105] The SEC acknowledged the potential consequences of not subjecting assurance providers to liability for their conclusions, but determined that they are outweighed by the potential benefits—more assurance providers in the market and registrants who voluntarily choose to provide assurance.[106]

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[103] *Id.* at 863 (§ 229.1506(b)(2)(i)).
[104] *Id.* at 863–64 (§ 229.1506(b)(2)(ii)).
[105] *Id.* at 331.
[106] *Id.* at 331–33.

GHG Emissions Attestation Report

The SEC does not prescribe a standard or framework for GHG emissions attestation reports, but rather, takes a "flexible approach," with certain minimum requirements for assurance providers.[107] This flexibility is expected to allow assurance providers to utilize standards with which they are already familiar, which in turn will reduce the cost of compliance and result in more accurate reports. The SEC notes that the attestation standards of the Public Company Accounting Oversight Board, American Institute of Certified Public Accountants, International Auditing and Assurance Standards Board, and the International Organization for Standardization meet the requirements of Item 1506(a), and other existing or future standards may as well.[108] This is based on such standards following due process procedures and being publicly available at no costs to investors.[109]

Voluntary Reports

The Final Rule requires that a registrant which is not required to include a GHG emissions attestation report to disclose certain information[110] about assurances if its GHG emissions disclosure was voluntarily subject to assurance. The voluntary assurance disclosure requirements are applicable to "(i) non-AF and non-LAF registrants that voluntarily disclose their GHG emissions in [an SEC] filing and voluntarily obtain assurance over such disclosure"; and (ii) filings made by AFs and LAFs between the compliance deadline for the GHG emissions disclosure requirements but before the compliance deadline for limited assurance.[111] Although registrants under these circumstances must disclose certain information about the assurances, the voluntary reporting requirements do not impose limitations upon the assurance obtained.

Financial Statement Disclosures (Article 14)

Newly introduced Article 14 of Regulation S-X will require registrants to include in their consolidated financial statements, and discuss in a separate footnote to the financial statements, specified climate-related information falling under two categories: (1) Expenditure Metrics and (2) Financial Estimates and Assumptions.

Expenditure Metrics

Registrants are required to present expenditures expensed and capitalized costs incurred as a result of severe weather events and other natural conditions during a relevant fiscal year in the income statement and/or balance sheets of its consolidated financial statements, as applicable, if such expenditures expensed and capitalized costs equal or exceed: (i) with respect to the income statement, one percent of the absolute value of income or loss before income tax expense or benefit for the relevant fiscal year and (ii) with respect to the balance sheets, one percent of the absolute value of stockholders' equity or deficit at the end of the relevant fiscal year.[112] For the purpose of calculating such expenditures expensed and capitalized costs, registrants must separately aggregate all expenditures expensed as incurred and losses, excluding recoveries, incurred during the fiscal year as a result of severe weather

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[107] *Id.* at 351.
[108] *Id.* at 349.
[109] *Id.*
[110] This includes: (1) Identification of the service provider of such assurance; (2) Description of the assurance standard used; (3) Description of the level and scope of assurance services provided; (4) Brief description of the results of the assurances services; (5) Whether the service provider has any material business relationships with or has provided any material professional services to the registrant; and (6) Whether the service provider is subject to any oversight inspection program, and if so, which program (or programs) and whether the assurance services over GHG emissions are included within the scope of authority of such oversight inspection program.
[111] *Id.* at 375 n.1588.
[112] *Id.* at 468 (17 C.F.R. § 210.14-02(b), (c) and (d)).

events and other natural conditions (and compare that to the absolute value of income or loss before income tax expense or the absolute value of stockholder's equity or deficit, as applicable), as well as all capitalized costs and charges, excluding recoveries, recognized during the fiscal year as a result of severe weather events and other natural conditions (and compare that to the absolute value of income or loss before income tax expense or the absolute value of stockholder's equity or deficit, as applicable).[113] The calculations described in the preceding sentence should exclude the aggregate amount of any recoveries recognized on the expenditures expensed and capitalized costs as a result of the severe weather events and other natural conditions for the relevant fiscal year, and such aggregate recoveries should also be presented as a separate line item from the expenditures expensed and capitalized costs presented in the income statement and/or balance sheets.[114]

The SEC anticipates that a majority of recoveries will consist of insurance proceeds received in connection with a severe weather event or other natural condition, but the SEC also acknowledges that there are other scenarios where recovery may occur.[115] Where such expenditures expensed and capitalized costs (excluding recoveries) exceed the one percent thresholds described above, registrants are required to present such expenditures and costs (and any related recoveries) as separate line items in the income statement and/or balance sheets to their consolidated financial statements, as applicable; provided, however, that such disclosure is not required if: (i) with respect to the income statement, the aggregate amount of expenditures expensed and losses incurred is less than $100,000 for the relevant fiscal year or (ii) with respect to the balance sheet, the aggregate amount of capitalized costs and charges is less than $500,000 for the relevant fiscal year.[116]

The SEC clarifies that expenditures expensed and capitalized costs can be considered "as a result of" severe weather events and other natural conditions if such event or condition is a significant contributing factor in incurring the cost, expenditure, charge, loss or recovery.[117]

Additionally, if carbon offsets or renewable energy credits ("RECs") have been used as a material component of a registrant's plan to achieve its disclosed climate-related targets or goals, registrants are required to disclose in the income statement and/or balance sheets of its consolidated financial statements, as applicable:

1. (A) the aggregate amount of carbon offsets and RECs expenses, (B) the aggregate amount of carbon offsets and RECs recognized, and (C) the aggregate amount of losses incurred on the capitalized carbon offsets and RECs, during the fiscal year;

2. the beginning and ending balance of such expenditures expensed and capitalized cost on the balance sheet for the fiscal year;

3. where in the income statement and/or balance sheet such expenditures expensed and capitalized costs are presented (*e.g.* in the Intangible Assets line on the balance sheet or in the General and Administrative line in the income statement); and

4. the accounting policy used for carbon offsets and RECs.[118]

The threshold for expenditure expensed and capitalized costs related to carbon offsets and RECs is premised on a standard materiality determination (not a one percent threshold), so if the materiality threshold is met, then the above described disclosure must be made.

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[113] *Id.* at 458, 468.
[114] *Id.* at 481 (17 C.F.R. § 210.14-02(f)).
[115] *Id.* at 481, n.2078.
[116] *Id.* at 468 (17 C.F.R. § 210.14-02(b)(1) and (b)(2)).
[117] *Id.* at 479 (17 C.F.R. § 210.14-02(g)).
[118] *Id.* at 487, 490 (17 C.F.R. § 210.14-02(e)(1) and (e)(2)).

Registrants are required to disclose whether the estimates and assumptions used to produce their consolidated financial statements were materially impacted by any risks and uncertainties associated with, or known impacts from, any severe weather events or other natural conditions or climate-related targets or transition plans disclosed by the registrant.[119] Further, registrants must qualitatively describe how such events or activities impacted the development of their estimates and assumptions.[120]

Presentation

Several key considerations for registrants in presenting the required disclosures under Article 14 include:

- Organizational Boundaries: Registrants are required to calculate the metrics using financial information consistent with their consolidated financial statements. For example, registrants must include financial information from consolidated subsidiaries in their calculations.[121]

- Accounting Principles: Registrants must apply the same set of accounting principles they are required to apply in the preparation of the rest of their consolidated financial statements.[122]

- Time Periods: The climate-related financial metrics must be provided for the registrant's most recently completed fiscal year and, to the extent previously disclosed or required to be disclosed, for the historical fiscal years, for which consolidated financial statements are included in the filing (*e.g.*, two years of climate-related financial metrics that correspond to balance sheet line items and three years of climate-related financial metrics that correspond to income statement line items, and less for EGCs and SRCs).[123]

- Contextual Information: Registrants must describe how each specified metric was derived and describe the significant inputs and assumptions, significant judgements and, if applicable, policy decisions made in the calculation of such metric. This disclosure should be included in a note to the financial statements, which will make the information more accessible for investors.[124]

The Article 14 disclosure requirements described above will apply to all public reporting companies, including ECGs and SRCs.[125]

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Enforcement of the Final Rule

The SEC's Division of Enforcement ("Enforcement") is generally one of the last to "speak" on newly promulgated rules since it must wait until it completes investigations into potential violations and files civil actions or settlements to enforce them. Here, Enforcement's approach will also be affected by how the Final Rule is potentially shaped or limited by the legal challenges that it faces (as further discussed below). Accordingly, it will likely be some time before we know how Enforcement will interpret and apply the Final Rule.

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[119] *Id.* at 504–505 (17 C.F.R. § 210.14-02(h)).
[120] *Id.*
[121] *Id.* at 526 (17 C.F.R. § 210.14-01(c)).
[122] *Id.*
[123] *Id.* at 531 (17 C.F.R. § 210.14-01(d)).
[124] *Id.* at 518 (17 C.F.R. § 210.14-02(a)).
[125] *Id.* at 412.

However, we can glean some insight by looking at how Enforcement currently applies the federal securities laws to climate-related disclosures. Some potential pathways to enforcement will be:

- Fraud. Classic securities fraud charges under Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 thereunder are always possible cases for Enforcement to find that a registrant failed to provide accurate, complete, and not misleading information in its SEC reports, whether negligently or intentionally. Indeed, Enforcement's ESG Task Force, announced in March of 2021, has already announced several matters where a registrant was alleged to have fraudulently misrepresented material climate-related facts in its SEC filings.[126]

- Reporting Violations. All reports filed with the SEC must be accurate, complete, and not misleading. In addition to the potential for securities fraud charges described above, registrants face reporting-specific violations when they include false or misleading information in SEC filings, including the omission of information that would be necessary to make any statements not misleading.

- Disclosure Controls and Procedures. Exchange Act Rule 13a-15 requires registrants to maintain disclosure controls and procedures, and requires company management to regularly evaluate the effectiveness of those controls and procedures. The rule additionally requires that the registrant's disclosure controls and procedures be designed to ensure that the information required to be disclosed is recorded, summarized, and reported to management to allow for timely and accurate disclosures. Critically, violations of Rule 13a-15 do not require Enforcement to prove intent or make a finding of recklessness or negligence. Rather, a Rule 13a-15 violation can be found where the SEC determines that information necessary for management to make timely and correct disclosures does not get reported to management, even where the disclosures are ultimately **not** found to be deficient. Because of the strict liability imposed by the Final Rule, issuers must assess their disclosure controls and procedures in light of the Final Rule to ensure that all necessary climate-related information gets to those involved in making disclosure decisions.

In cases alleging fraud or misstatements in SEC filings, Enforcement will often also find violations of books and records and internal controls over financial reporting. Given the quantitative requirements of the Final Rule, registrants should ensure management has designed and instituted appropriate recordkeeping and accounting controls to capture the required climate-related information.

While we wait for the litigation related to the Final Rule (as discussed below) to play out, registrants should keep in mind that even without the Final Rule in effect, Enforcement already has broad authority to bring reporting and disclosure controls and procedures charges against registrants that fail to support any climate-related statements they make in any public statement or SEC filing.

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Legal Challenges to the Final Rule

As of the time of publication, at least nine petitions for review challenging the Final Rule had been filed in six different courts of appeals. When multiple parties challenge the same agency action in different courts, the Judicial Panel on Multidistrict Litigation (the "JPML") conducts a "lottery" to decide which circuit will hear the case.[127] On March 21, 2024, the JPML conducted a lottery and selected the Eighth Circuit as the winning venue. The SEC is now required to file the record in that Court, and the "losing" circuits are required to transfer their appeals to the Eighth Circuit. Thus, it appears that the "lead" challenge to the Final

[126] *See, e.g.*, *Sec. & Exch. Comm'n v. Vale S.A.*, No. 1:22-cv-02405 (E.D.N.Y. 2022).
[127] *See* 28 U.S.C. § 2112(a)(3).

Rule will be *State of Iowa v. Securities and Exchange Commission* (8th Cir. No. 24-1522). That said, it is still possible that one or more parties may file motions to transfer “for convenience.” A party filing that type of motion could argue that, even though the Eighth Circuit has won the lottery, the cases should now be transferred to another circuit because litigating elsewhere would be more convenient.

On March 15, 2024, before the JPML had run the lottery, the Fifth Circuit issued a temporary administrative stay of the Final Rule. The Fifth Circuit’s short order did not elaborate on reasons for granting the administrative stay. On March 22, 2024, after the lottery was conducted, the Fifth Circuit lifted its temporary administrative stay and transferred the cases that had been filed in that court to the Eighth Circuit. Thus, as of today, the Final Rule is not stayed.

On March 26, 2024, two groups of challengers to the Final Rule filed requests that the Eighth Circuit issue a new temporary administrative stay or a full stay pending judicial review. As of the time of publication, the Eighth Circuit had not ruled on those requests. There is no deadline for the Eighth Circuit to resolve the pending requests for stays, but we expect that they will be resolved relatively quickly—within a matter of weeks. If a stay is ultimately granted, the SEC might ask the Supreme Court to lift the stay. If a stay is denied, the challengers to the Final Rule could ask the Supreme Court to stay it.

The Eighth Circuit issued an initial briefing schedule for State of Iowa v. Securities and Exchange Commission on March 12, 2024, but it is not yet clear whether that briefing schedule will change. If it does not change, the challengers’ principal briefs will be due in May, and the SEC’s brief will be due in June. Parties who wish to intervene in the Eighth Circuit case must do so by April 11, 2024. Parties who wish to file amicus curiae briefs must do so within seven days of the filing of the principal brief of the party they wish to support. The entire challenge to a regulation typically takes about 6–18 months in the court of appeals. Some courts strongly encourage the parties to agree to their own briefing schedule and propose it to the court; if that happens here, much of the timeline will be driven by the parties themselves. If the Supreme Court grants review, another 12–18 months of review could be possible.

As far as how soon the Final Rule could go into effect if the SEC succeeds in the substantive litigation, there is almost always some time period between the end of the court case and when the agencies start to require compliance. While it can be short (e.g., 60 days), that seems less likely here because of the annual reporting cycles and the way the Proposed Rule compliance deadlines were structured. The compliance timelines in the Final Rule suggest that the SEC recognized that companies will need at least a full fiscal year to come into compliance once the Final Rule is in effect. As part of a lawsuit, the parties will usually discuss the appropriate remedy, including new deadlines to comply if the Final Rule is upheld by the court. Sometimes a court will first decide whether to uphold the rule and then ask for the parties to provide supplemental briefing on the right remedy (which could include the appropriate timeline for implementing the Final Rule), and will continue to enjoin the rule until they determine the right remedy.

The timeframe for litigation will become clearer in the upcoming weeks, although we may not know with a high degree of certainty what is likely to happen for some time. Because there is not currently a stay in effect, companies should assume that the Final Rule will go into effect on schedule.

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How Does the Final Rule Interact With Other Mandatory Reporting Regimes?

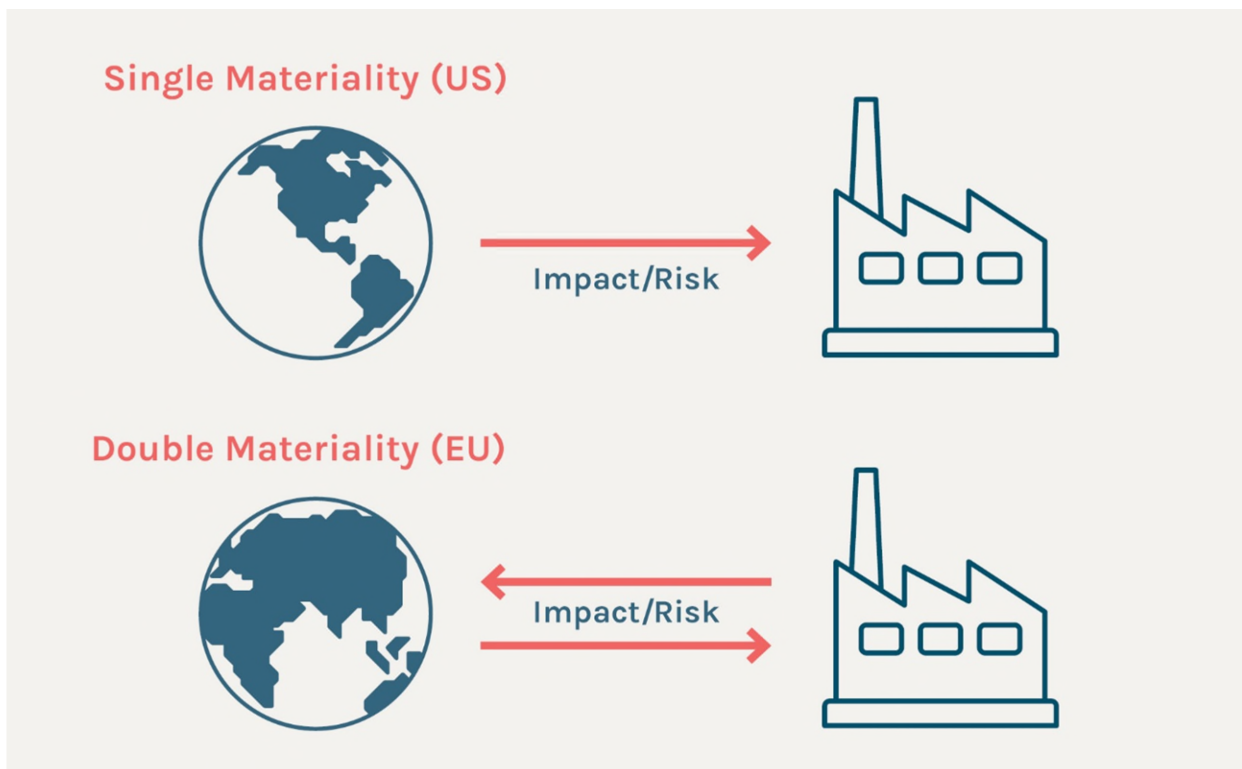
While the importance of the SEC's regulation over public companies cannot be overstated, climate and other environmental, social and governance ("ESG") disclosure obligations (both mandatory and voluntary) in other jurisdictions have grown exponentially in recent years. And registrants subject to the SEC rules, but who operate in various worldwide jurisdictions, including certain US states, must be cognizant of the overlapping reporting obligations that they may be subject to, in addition to the SEC rules (whether and to what extent the Final Rule survives court challenges).

EU's Corporate Sustainability Reporting Directive

Effective January 5, 2023, the EU's Corporate Sustainability Reporting Directive ("CSRD") outlines reporting obligations for large companies and listed companies, including EU subsidiaries of non-EU companies with a "large undertaking" and non-EU companies with "substantial activity" and a subsidiary in the EU with at least €40 million or that is a large or listed subsidiary.

Companies subject to the CSRD must use the European Sustainability Reporting Standards ("ESRS") to comply with reporting obligations. The General Requirements (ESRS 1 and ESRS 2) are centered around the four pillars of the TCFD. Furthermore, ESRS E1, which covers climate, requires companies to report their Scope 1, 2 and 3 GHG emissions.

Although companies complying with the ESRS will meet many of the requirements of the Final Rule, there are several key differences to consider. Generally, the CSRD reporting obligations are much broader than the Final Rule. And the CSRD's concept of materiality is quite different than traditional notions of materiality under U.S. law (*i.e.*, whether a reasonable investor would consider information important in making an investment decision). Under the CSRD, reporting companies must report certain information that is predicated not solely on the impacts of a potential risk *upon the business*, but also the *impact of a business on other stakeholders*, society at large or even the environment.



For companies subject to reporting requirements under the Final Rule as well as the CSRD, this may lead to issues in standardizing disclosures and expose companies to potential litigation, for instance, where a company makes disclosures predicated on double materiality under ESRS, as opposed to the SEC's traditional materiality standard. Furthermore, the Final Rule excludes Scope 3 GHG emissions entirely, whereas the CSRD would require them. The inconsistent approaches to mandatory disclosures in these and other respects, will pose challenges for companies; certain disclosure choices or obligations in one jurisdiction may be inherently at odds with disclosures in another, and the inconsistent disclosures could create enforcement risks by multiple regulators, and could pose litigation risk under any number of legal theories (*e.g.*, greenwashing or failure to meet fiduciary duties, among others).

And a note of caution: although ESRS disclosure requirements can be mapped out to align with TCFD recommendations, neither ESRS nor the TCFD recommendations contain the materiality qualifiers present in the SEC's Final Rule, so registrants should be mindful that there are potentially significant distinctions in otherwise seemingly analogous reporting constructs.

California Climate Laws

The potentially inconsistent mandatory climate reporting obligations do not only apply to organizations with operations overseas. Any large company that "does business" in California may also be subjected to new mandatory climate-related disclosure obligations in the near future. The Final Rule follows in the wake of California's recent adoption of wide-sweeping climate disclosure laws, the Climate Corporate Data Accountability Act ("CCDAA" or "SB 253") and Climate-Related Financial Risk Act ("CRFRA" or "SB 261"), which were both signed into law on October 7, 2023. The CCDAA and the CRFRA not only include significant disclosure requirements, but also have sweeping implications for companies beyond the California border, including many companies subject to the Final Rule.

Required Disclosures under the California Climate Laws

In short, the CCDAA requires reporting companies to disclose for their entire enterprise (no matter where situated) all their Scope 1, 2 and 3 GHG emissions, and the CRFRA requires reporting companies to disclose climate risk reports in line with the recommendations of the TCFD or equivalent disclosure requirements under the International Sustainability Standards Board ("ISSB") climate-related disclosures standard.

The CCDAA provides that the California Air Resources Board ("CARB") shall develop and adopt regulations on or before January 1, 2025, requiring reporting entities to disclose, annually, their Scope 1, 2, and 3 GHG emissions in accordance with the GHG Protocol.[128] The CCDAA is applicable to all public *and private* U.S. companies that are "doing business in California" and have total annual revenues exceeding $1 billion. The CCDAA fails to define what "doing business in California" means. However, according to the legislative history of the assembly discussion, the term intends to cover companies "engaging in any transaction for the purpose of financial gain within California, being organized or commercially domiciled in California, or having California sales, property or payroll exceed specified amounts: as of 2020 being $610,395, $61,040, and $61,040, respectively."[129][130] Under the California tax code, "California sales" is defined to include: (i) sales of tangible personal property if the property is delivered or shipped to a purchaser within California regardless of the conditions of the sale, (ii) the purchaser of services received the benefit of the services in California, or (iii) sold, leased, or licensed tangible property is located in California.[131]

The CRFRA is applicable to all public *and private* U.S. companies that are "doing business in California" and have total annual revenues exceeding $500 million. The definition of "doing business in California" should be understood to have the same meaning as under the CCDAA. The CRFRA requires that a "covered entity" prepare and make publicly available a climate-related financial risk report on or before January 1, 2026, and biennially thereafter.

Navigating the California Laws[132] and the SEC Rule

The CCDAA and the CRFRA differ from the Final Rule in multiple respects. First, the California climate-disclosure rules are applicable to both public and private companies that otherwise meet the applicability requirements, while the SEC rule applies exclusively to publicly listed registrants. Second, the CCDAA requires disclosure of Scope 3 GHG emissions whereas the Final Rule does not require disclosure of Scope 3 GHG emissions. The CCDAA does not include materiality thresholds for any Scope 1, 2 or 3 GHG emissions disclosures, however, in an effort to lessen the burden on reporting companies and presumably to lead to more conformity in disclosure, respondents are permitted to use emissions factors (*i.e.*, estimates for the GHG profiles for certain industries, products and materials) in conformance with the

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[128] The CCDAA provides the following applicable definitions: (i) Scope 1 GHG emissions are defined as "all direct greenhouse gas emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities"; (ii) Scope 2 GHG emissions are defined as "indirect greenhouse gas emissions from consumed electricity, steam, heating or cooling purchased or acquired by a reporting entity, regardless of location"; and (iii) Scope 3 GHG emissions are defined as "indirect upstream and downstream greenhouse gas emissions, other than scope 2 emissions, from sources that the reporting entity does not own or directly control and may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products."

[129] SB 253, Senate Rules Committee, Office of Senate Floor Analyses (Sept. 7, 2023).

[130] These numbers are updated annually based on inflation. For 2023, the specified amounts were $711,538, $71,154 and $71,154, respectively.

[131] The bill sponsors of SB 253 and SB 261 estimate that the laws would capture approximately 5,500 companies and approximately 10,000 companies, respectively.

[132] In addition to the CCDAA and the CFRA, a third California climate related disclosure law, AB 1305, was also signed into law on October 7, 2023. AB 1305 requires disclosure by companies (with no minimum revenue thresholds) of certain information on their websites regarding the use of voluntary carbon offsets or certain claims regarding significant carbon reductions. This law can be considered an effort to combat greenwashing in the voluntary carbon offset market and in certain corporate claims relating to GHG emissions reductions. While this law appears to have overlap with fewer companies subject to the Final Rule, care should be taken with respect to mandatory disclosures under AB 1305 given potential unintended consequences with the Final Rule, with respect to requirements to disclose certain information regarding climate transition plans, the use of voluntary carbon offsets and RECs.

GHG Protocol. The CCDAA would, however, provide for a safe harbor with regard to Scope 3 GHG emissions disclosures made with a reasonable basis and disclosed in good faith. Under the CCDAA, reporting of Scope 1 and 2 GHG emissions will begin in 2026, or on a date to be determined by CARB, while reporting of Scope 3 GHG emissions will begin in 2027 and must be disclosed no later than 180 days after disclosure of a company's Scope 1 and 2 GHG emissions.[133]

Just as the Final Rule has already faced numerous legal challenges, both California regulations have already been subject to litigation. On January 30, 2024, the U.S. Chamber of Commerce and five co-plaintiffs representing a coalition of business groups filed a lawsuit against the state of California in the U.S. District Court for the Central District of California, arguing that the CCDAA and the CRFRA "unconstitutionally compel speech in violation of the First Amendment and seek to regulate an area that is outside California's jurisdiction."[134] The relief sought by the plaintiffs, if granted, would halt implementation and enforcement of the new disclosure laws in full. Further, on January 10, 2024, California Governor Newsom released a budget proposal that featured cuts to the overall funding of the CARB and paused funding for the implementation of all newly signed laws, including the CCDAA and CRFRA, until May 2024. Given the two laws are subject to litigation and are, as of this writing, not funded in the state's budget, it remains to be seen if and whether the laws will be implemented as planned and what the impacts on companies will be as they prepare for compliance.

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How to Prepare for the Final Rule

Given the scrutiny the disclosures required under the Final Rule are certain to receive from a company's investors, regulators, and other stakeholders, great care should be given to compliance planning. Additionally, given the overlapping jurisdictional regulations emerging in the EU, California and in other jurisdictions, companies should be vigilant about consistency in their reporting and understand why disclosures may or may not be appropriate in given circumstances. They should also be aware that the mere disclosure of a climate related risk—or even the volume of a given GHG emission—in one jurisdiction could give rise to new reporting obligations or potential risks elsewhere. Further, in addition to the GHG emissions and, in certain cases, financial reporting obligations under various reporting regimes, proper corporate governance principles need to be considered and reported, including (if applicable) how boards and management are overseeing and managing climate-related risks.

Next Steps:

Gather Facts. Companies should perform an inventory of historical climate-related disclosures to determine if any such claims, goals (such as net-zero emissions commitments), disclosures or tools may trigger any reporting obligations under the Final Rule.

Understand Gaps. Many companies already make climate-related disclosures that have similarities to the Final Rule (*e.g.*, voluntary TCFD-informed disclosures), which may require modification to meet the new rule. Furthermore, the Final Rule creates new challenges for public companies that do not make climate-related disclosures or collect the appropriate backup information. In particular, the attestation

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[133] Such emissions disclosures are to be subject to assurance, which is to be performed by an independent third-party assurance provider. Assurance for Scope 1 and 2 GHG emissions is to be performed at a limited assurance level beginning in 2026 and at a reasonable assurance level beginning in 2030. With respect to Scope 3 GHG emissions, CARB is to "review and evaluate trends" in assurance during 2026 and may establish, on or before January 1, 2027, applicable assurance requirements. Notwithstanding that, however, the CCDAA sets out that assurance for Scope 3 GHG emissions will be performed at a limited assurance level beginning in 2030.

[134] *See* Amended Complaint for Declaratory and Injunctive Relief at 3, Chamber of Com. v. Randolph, No. 2:24-cv-00801 (C.D. Cal. Feb. 22, 2024).

requirements applicable to disclosures of Scope 1 and Scope 2 GHG emissions will require moving away from a desktop exercise to a process that includes real disclosure controls so that attestation providers can verify emissions data. And, because many existing corporate climate disclosures have been made on a voluntary basis[135] in sustainability reports and the Final Rule will require information be filed (not furnished), filers may be newly subject to liability under Section 18 of the Exchange Act for making "false or misleading" statements in their disclosures. Accordingly, care should be taken with enhanced reporting and controls to better ensure the accuracy of gathering, validating and reporting the data under the Final Rule.

Engage Attestation Providers and Advisers. Companies may need to evaluate the capabilities of their current service providers to provide attestation services and, if necessary, retain new advisers to support necessary capabilities. Companies should expect a potential "gold rush" to lock up attestation providers. Attestation is not required under EPA regulation, so there is still a developing market of providers in this space, and Companies that have not already taken preliminary steps to achieve or at least identify a pathway to obtaining limited assurance over GHG emissions data may find themselves behind the curve. Companies should also assess the expected incremental costs of engaging new advisors so as to plan their budgets and any necessary internal approvals appropriately.

Consider Unintended Consequences. Companies would be wise to continue monitoring related ESG and anti-ESG trends. The increase in mandatory disclosures both by the SEC and other jurisdictions will increase available data and may give more fodder to class-action plaintiffs asserting claims related to greenwashing. Additionally, disclosure under one regime may expose a company to new disclosures—or even penalties—in another jurisdiction. Disclosure alone could create new transition risks for a company, whereby the disclosure of certain climate metrics, like GHG emissions, could create new risks to the business through new regulations, taxes or reputational damage.

Monitor Legal Challenges. As described above, the Final Rule has already been subject to numerous legal challenges. While the cases work their way through the courts, companies should monitor developments in the litigation and any impacts it may have on rule implementation timing or any scaling back of the requirements. But companies also need to plan for scenarios where the Final Rule may survive in some form—and even survive in whole—and therefore continue their reasonable preparations for this and other jurisdictions' climate regulations.

Please reach out to your Vinson & Elkins team to discuss the potential impacts of the Final Rule and other climate reporting mandates on your business and how you should be preparing for these developments.

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[135] For instance, in accordance with TCFD or in other contexts, such as the CDP or the Science Based Targets initiative.

Annex A

Important Regulatory Definitions

The Final Rule incorporates terms that may be unfamiliar to some registrants, especially those that have not previously made climate-related disclosures. Here we highlight some key definitions to keep in mind that are also provided in Item 1500 of the Final Rule.

Term	Definition
Carbon dioxide equivalent (“CO_2e”)	The common unit of measurement to indicate the global warming potential (“GWP”) of each GHG, expressed in terms of the GWP of one unit of carbon dioxide.
Carbon offsets	An emissions reduction, removal, or avoidance of GHGs in a manner calculated and traced for the purpose of offsetting an entity’s GHG emissions.
Climate-related risks	Actual or potential negative impacts of climate-related conditions and events on a registrant’s business, results of operations, or financial condition.
Emission factor	A multiplication factor allowing actual GHG emissions to be calculated from available data or, if no activity data are available, economic data, to derive absolute GHG emissions. Examples include kilowatt-hours of electricity used, quantity of fuel used, output of a process, hours of operation of equipment, distance travelled, and floor area of a building.
Greenhouse gases (“GHGs”)	Carbon dioxide (“CO_2”), methane (“CH_4”), nitrous oxide (“N_2O”), nitrogen trifluoride (“NF_3”), hydrofluorocarbons (“HFCs”), perfluorocarbons (“PFCs”), and sulfur hexafluoride (“SF_6”).
GHG emissions attestation provider	A person or firm that (1) is an expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions and (2) is 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. ***Significant experience*** means having sufficient competence and capabilities necessary to: perform engagements in accordance with attestation standards and applicable legal and regulatory requirements and enable the service provider to issue reports that are appropriate under the circumstances.
Internal carbon price	An estimated cost of carbon emission used internally within an organization.
Operational boundaries	The boundaries that determine the direct and indirect emissions associated with the business operations owned or controlled by a registrant.
Organizational boundaries	The boundaries that determine the operations owned or controlled by a registrant for the purpose of calculating its GHG emissions.
Renewable energy credit (“REC”)	A credit or certificate representing each megawatt-hour (1 MWh or 1,000 kilowatt-hours) of renewable electricity generated and delivered to a power grid.
Physical risk	Acute and chronic risks to a registrant’s business operations. ***Acute risks*** are event-driven and may relate to shorter term severe weather events, such as hurricanes, floods, tornadoes, and wildfires, among other events.

	Chronic risks relate to longer term weather patterns, such as sustained higher temperatures, sea level rise, and drought, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water.
Scenario analysis	A process for identifying and assessing a potential range of outcomes of various possible future climate scenarios, and how climate-related risks may impact a registrant's business strategy, results of operations, or financial condition over time.
Scope 1 GHG emissions	Direct GHG emissions from operations owned or controlled by a registrant.
Scope 2 GHG emissions	Indirect GHG emissions from the generation of purchased or acquired electricity, stream, heat, or cooling that is consumed by operations owned or controlled by a registrant.
Transition plan	A registrant's strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations.
Transition risk	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 adaptation to, climate-related risk. Examples include, among others, increased costs attributable to climate-related changes in law or policy; reduced market demand for carbon-intensive products leading to decreased prices or profits for such products; the devaluation or abandonment of assets; risk of legal liability and litigation defense costs; competitive pressures associated with the adoption of new technologies; and reputational impacts that might trigger changes to market behavior, consumer preferences or behavior, and registrant behavior.

Annex B

Overview of Proposed Rule vs. Final Rule Requirements

Topic	Proposed Rule	Final Rule
Regulation S-K		
Governance	Describe the board of directors' ("board") oversight over climate-related risks including: • The identity of any board committee that oversees climate-related risk. • Whether any director has expertise in climate-related risks. • How the board discusses climate related risks (including how the board is informed about such risks and the frequency of the discussions). • Whether and how the board considers climate-related risks as part of business strategy, risk management, and financial oversight. • Whether and how the board sets and oversees progress against climate-related targets or goals. • The board's oversight of climate-related opportunities (if applicable).	Describe the board's oversight over climate-related risks including: • The identity of any board committee or subcommittee that oversees climate-related risk. • How the board is informed about climate-related risks. • ***If*** the company discloses a climate-related target or goal or transition plan, whether/how the board oversees progress against such target, goal, or transition plan.
	Describe management's role in assessing and managing the registrant's ***material*** climate-related risks, including: • Whether/which management positions or committees are responsible for assessing and managing climate-related risks. • The relevant expertise of such positions or committees. • How such positions or committees are informed about and monitor climate-related risks. • Whether/how frequently such positions or committees report to the board or a board committee on such risks. • Management's role in assessing and managing climate-related opportunities (if applicable).	Describe management's role in assessing and managing the registrant's ***material*** climate-related risks, including: • Whether/which management positions or committees are responsible for assessing and managing climate-related risks. • The relevant expertise of such positions or committees. • How such positions or committees assess and manage climate-related risks. • Whether such positions or committees report information about such risks to the board or a board committee. *Examples of what may constitute relevant management expertise: (1) prior work experience, (2) relevant degrees or certifications, knowledge,*

Topic	Proposed Rule	Final Rule
		skills, (3) or other background in climate-related matters

Strategy	Describe any climate-related risks (and if applicable, climate opportunities) reasonably likely to have a ***material*** impact on the registrant's business or consolidated financial statements over the short-, medium-, and long-term, whether each such risk is physical or transition risk, and provide the following information for each such risk, as applicable:
	• Physical Risks
	  o Whether it is acute or chronic.
	  o The location and nature of the properties, processes, or operations subject to the physical risk.
	  o If related to flooding of property in flood hazard areas, the percentage of assets located in flood hazard areas.
	  o If related to property in high or extremely high water stress areas, the amount of assets located in those regions and the percentage of the registrant's total water usage from water withdrawn in those regions.
	• Transition Risk
	  o Whether it relates to regulatory, technological, market, liability, reputational, or other transition-related factors, and how those factors impact the registrant.
	
	Disclose how the registrant defines short-, medium-, and long-term time horizons.
		Describe any climate-related risks that have ***materially*** impacted or are reasonably likely to have a ***material*** impact on the registrant, including on its strategy, results of operation, or financial condition over the short-term or long-term, disclose whether each such risk is physical or transition risk, and provide the information necessary to understand the nature of the risk and the extent of the registrant's exposure to the risk, including, as applicable:
		• Physical Risk
		  o Whether it is acute or chronic.
		  o The location and nature of the properties, processes, or operations subject to the physical risk.
		• Transition Risk
		  o Whether it relates to regulatory, technological, market, or other transition-related factors, and how those factors impact the registrant.
		
		Defines short-term as the next 12 months and long-term as beyond the next 12 months.

	Describe the actual and potential impacts of any climate-related risk identified on the registrant's strategy, business model, and outlook, including impacts on the following: • Business operations (including types and locations of operations). • Products or services. • Suppliers and other parties in value chain. • Activities to mitigate or adapt to climate-related risks. • Expenditures for research and development.	Describe the actual and potential ***material*** impacts of any climate-related risk identified on the registrant's strategy, business model, and outlook, including, as applicable, ***material*** impacts on the following: • Business operations (including types and locations of 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.

Topic	Proposed Rule	Final Rule
	Include the time horizon for each impact.	• Expenditures for research and development.
	Discuss whether and how any impacts described above are considered as part of the registrant's strategy, financial planning, and capital allocation (providing both current and forward-looking statements), including: • Whether the impacts have been integrated into the registrant's business model or strategy, including how resources are being used to mitigate climate-related risks. • How the metrics and targets referenced in the proposed rule relate to the registrant's business model or strategy, including a discussion of the role that carbon offsets or RECs play in such strategy.	Discuss whether and how any impacts described above are considered as part of the registrant's strategy, financial planning, and capital allocation, including, as applicable: • Whether the impacts have been integrated into the registrant's business model or strategy, including whether and how resources are being used to mitigate climate-related risks. • How the targets or transition plans referenced in the Final Rule relate to the registrant's business model or strategy.
	Discuss how any climate-related risks have affected or are reasonably likely to affect the registrant's consolidated financial statements.	Discuss how any climate-related risks have ***materially*** impacted or are reasonably likely to ***materially*** impact the registrant's business, results of operations, or financial condition. Describe quantitatively and qualitatively the ***material*** expenditures incurred and material impacts on financial estimates and assumptions that directly result from activities to mitigate or adapt to climate-related risks.
	If the registrant has adopted a transition plan, disclose: • A description of the plan including metrics and targets used to identify and manage climate-related risk and actions taken pursuant to the plan during the year to achieve targets/goals. • How the registrant plans to mitigate or adapt to any identified physical risks. • How the registrant plans to achieve climate-related opportunities.	***If*** the registrant has adopted a transition plan to manage ***material*** transition risk, disclose: • A description of the plan and actions taken pursuant to the plan during the year/how such actions have impacted the registrant's business, results of operation, or financial condition. • Material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the transition plan.
	Describe the resilience of the registrant's business strategy given potential future changes in climate-related risks. ***If*** the registrant uses any analytical tools, such as scenario analysis, to assess the impact of climate-related risk on the business and consolidated financial statements and support its business	***If*** the registrant uses scenario analysis to assess the impact of climate-related risks on its business, results of operations, or financial condition and determines that such risk is reasonably likely to have a ***material*** impact on such matters, describe each scenario including:

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	model, disclose (for each scenarios considered, as applicable): • Parameters, assumptions, analytical choice. • Projected financial impacts on the business strategy.	• Parameters, assumptions, and analytical choices used. • Expected ***material*** impacts.
	If a registrant uses an internal carbon price, disclose for each price: • Price per metric of CO2e. • Total price and how it is estimated to change over time. • If different from the GHG emission organizational boundary, boundaries for measurement of CO2e on which total price is based. • The rationale for selecting the internal carbon price.	***If*** a registrant's use of an internal carbon price is ***material*** to how it evaluates and manages climate-related risks, disclose for each price: • Price per metric of CO2e. • Total price and how it is estimated to change over time. If the scope of entities and operations involved in the use of such price is ***materially*** different from the organizational boundaries used for calculating GHG emissions pursuant to the Final Rule, disclose a description of the difference.
Risk Management	Describe the registrant's processes for identifying, assessing, and managing climate-related risks and, if applicable, opportunities, and disclose, as applicable, how the registrant: • Determines the relative significance of climate-related risks compared to other risks. • Considers existing or likely regulatory requirements or policies when identifying climate-related risks. • Considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks. • Determines the materiality of climate-related risks. • Decides whether to mitigate, accept, or adapt to the particular risk. • Prioritizes whether to address the climate-related risks. • Determines how to mitigate any high priority risks. Disclose whether and how such processes been integrated into the registrant's overall risk management system or processes.	Describe the registrant's processes for identifying, assessing, and managing ***material*** climate-related risks and disclose, as applicable, how the registrant: • Identifies whether it has incurred or is reasonably likely to incur ***material*** physical or transition risk. • Decides whether to mitigate, accept, or adapt to the particular risk. • Prioritizes whether to address the climate-related risks. ***If*** managing a ***material*** climate-related risk, disclose whether and how such processes been integrated into the registrant's overall risk management system or processes.
	If a separate board or management committee is responsible for assessing and managing climate-related risks, disclose how that committee interacts	None.

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	with the board or management committee governing risks.	
Targets and goals	Disclose for each of the registrant's climate-related target or goals: • The scope of activities and emissions included. • The unit of measurement (including whether absolute or intensity based). • The defined time horizon by which the target is intended to be achieved, and whether the time horizon is based on one or more goals established by a climate-related treaty, law, regulation, policy, or organization. • The defined baseline time period and the means by which progress will be tracked. • Any interim targets. • How the registrant intends to meet its climate-related targets or goals. • Relevant data to indicate whether the registrant is making progress towards meeting the target or goal and how such progress has been achieved. Update this disclosure each fiscal year to describe actions taken during the year to achieve the targets or goals.	Disclose any climate-related target or goal if it has ***materially*** affected or is reasonably likely to ***materially*** affect the registrant's business, results of operations, or financial condition, including any information necessary to understand 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, and 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. • How the registrant intends to meet its climate-related targets or goals. Disclose any progress made toward meeting the target or goal and how any such progress has been achieved and provide updates each fiscal year by describing the actions taken during the year to achieve the targets or goals, including: • 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 Quantitative and qualitative disclosure of any ***material*** expenditures and ***material*** impacts on financial estimates and assumptions as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal.
	If carbon offsets or RECs have been used as a component of a registrant's plan to achieve climate-related targets or goals, disclose:	***If*** carbon offsets or RECs have been used as a ***material*** component of a registrant's plan to achieve climate-related targets or goals, disclose:

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	• The amount of carbon 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. • The cost of the offsets or RECs.	• 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. • The cost of the offsets or RECs.
GHG emissions metrics	Disclose a registrant's GHG emissions for its most recently completed fiscal year, and for the historical fiscal years included in its consolidated financial statements in the filing, to the extent such historical GHG emissions data is reasonably available. • For each required disclosure of a registrant's Scopes 1, 2, and 3 emissions, disclose the emissions both disaggregated by each constituent greenhouse gas and in the aggregate, expressed in terms of CO2e. • When disclosing a registrant's Scopes 1, 2, and 3 emissions, exclude the impact of any purchased or generated offsets. For Scope 1 and 2 emissions: • Disclose the registrant's total Scope 1 emissions and total Scope 2 emissions separately after calculating them from all sources that are included in the registrant's organizational and operational boundaries. • When calculating emissions, a registrant may exclude emissions from investments that are not consolidated, are not proportionately consolidated, or that do not qualify for the equity method of accounting in the registrant's consolidated financial statements. For Scope 3 emissions: • Disclose the registrant's total Scope 3 emissions ***if material***. A registrant must also disclose its Scope 3 emissions if it has set a GHG emissions reduction target or goal	A registrant that is a large accelerated filer or an accelerated filer must disclose its Scope 1 emissions and/or its Scope 2 emissions, if such emissions are ***material***, for its most recently completed fiscal year and, to the extent previously disclosed in a Commission filing, for the historical fiscal year(s) included in the consolidated financial statements in the filing. For any GHG emissions required to be disclosed pursuant to the Final Rule: • Disclose the registrant's Scope 1 emissions and/or Scope 2 emissions separately, each expressed in the aggregate, in terms of CO2e. In addition, if any constituent gas of the disclosed emissions is individually ***material***, disclose such constituent gas disaggregated from the other gases. • Disclose the registrant's Scope 1 emissions and/or Scope 2 emissions in gross terms by excluding the impact of any purchased or generated offsets. Smaller reporting companies and emerging growth companies are exempt from, and need not comply with, the GHG emissions disclosure requirements of the Final Rule.

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	that includes its Scope 3 emissions. Disclosure of a registrant's Scope 3 emissions must be separate from disclosure of its Scopes 1 and 2 emissions. If required to disclose Scope 3 emissions, identify the categories of upstream or downstream activities that have been included in the calculation of the Scope 3 emissions. If any category of Scope 3 emissions is significant to the registrant, identify all such categories and provide Scope 3 emissions data separately for them, together with the registrant's total Scope 3 emissions. • If required to disclose Scope 3 emissions, describe the data sources used to calculate the registrant's Scope 3 emissions. Smaller reporting companies are exempt from, and need not comply with, the GHG emissions disclosure requirements of the proposed rule.	
	Using the sum of Scope 1 and 2 emissions, disclose GHG intensity in terms of metric tons of CO2e per unit of total revenue (using the registrant's reporting currency) and per unit of production relevant to the registrant's industry for each fiscal year included in the consolidated financial statements. Disclose the basis for the unit of production used. If Scope 3 emissions are otherwise disclosed, separately disclose GHG intensity using Scope 3 emissions only. If a registrant has no revenue or unit of production for a fiscal year, it must disclose another financial measure of GHG intensity or another measure of GHG intensity per unit of economic output, as applicable, with an explanation of why the particular measure was used. A registrant may also disclose other measures of GHG intensity, in addition to metric tons of CO2e per unit of total revenue (using the registrant's reporting currency) and per unit of production, if it includes an explanation of why a particular measure was used and why the registrant	None.

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	believes such measure provides useful information to investors.	
	A registrant must describe the methodology, significant inputs, and significant assumptions used to calculate its GHG emissions. • The description of the registrant's methodology must include the registrant's organizational boundaries, operational boundaries, calculation approach and any calculation tools used to calculate the GHG emissions. • The organizational boundary and any determination of whether a registrant owns or controls a particular source for GHG emissions must be consistent with the scope of entities, operations, assets, and other holdings within its business organization as those included in, and based upon the same set of accounting principles applicable to, the registrant's consolidated financial statements. • A registrant must use the same organizational boundaries when calculating its Scope 1 emissions and Scope 2 emissions. If required to disclose Scope 3 emissions, a registrant must also apply the same organizational boundaries used when determining its Scopes 1 and 2 emissions as an initial step in identifying the sources of indirect emissions from activities in its value chain over which it lacks ownership and control and which must be included in the calculation of its Scope 3 emissions. • A registrant may use reasonable estimates when disclosing its GHG emissions as long as it also describes the assumptions underlying, and its reasons for using, the estimates. o When disclosing its GHG emissions for its most recently completed fiscal year, if actual reported data is not reasonably available, a registrant may use a reasonable estimate of its GHG emissions for its fourth fiscal quarter, together with actual, determined GHG emissions	Describe the methodology, significant inputs, and significant assumptions used to calculate the registrant's GHG emissions including: • The organizational boundaries used when calculating the registrant's disclosed GHG emissions and provide a brief explanation of the difference from the scope of entities and operations included in the registrant's consolidated financial statements if the organizational boundaries ***materially*** differ. • A brief discussion of, in sufficient detail for a reasonable investor to understand, the operational boundaries used. • A brief description of, in sufficient detail for a reasonable investor to understand, the protocol or standard used to report the GHG emissions. A registrant may use reasonable estimates when disclosing its GHG emissions as long as it also describes the underlying assumptions, and its reasons for using, the estimates.

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	data for the first three fiscal quarters, as long as the registrant promptly discloses in a subsequent filing any material difference between the estimate used and the actual, determined GHG emissions data for the fourth fiscal quarter. o In addition to the use of reasonable estimates, a registrant may present its estimated Scope 3 emissions in terms of a range as long as it discloses its reasons for using the range and the underlying assumptions. • A registrant must disclose, to the extent ***material*** and as applicable, any use of third-party data when calculating its GHG emissions, regardless of the particular scope of emissions. When disclosing the use of third-party data, it must identify the source of such data and the process the registrant undertook to obtain and assess such data. o A registrant must disclose any ***material*** change to the methodology or assumptions underlying its GHG emissions disclosure from the previous fiscal year. • A registrant must disclose, to the extent ***material*** and as applicable, any gaps in the data required to calculate its GHG emissions. A registrant's GHG emissions disclosure should provide investors with a reasonably complete understanding of the registrant's GHG emissions in each scope of emissions. If a registrant discloses any data gaps encountered when calculating its GHG emissions, it must also discuss whether it used proxy data or another method to address such gaps, and how its accounting for any data gaps has affected the accuracy or completeness of its GHG emissions disclosure. • When determining whether its Scope 3 emissions are material, and when disclosing those emissions, in addition to emissions from activities in its value chain, a registrant must	

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	include GHG emissions from outsourced activities that it previously conducted as part of its own operations, as reflected in the financial statements for the periods covered in the filing. • If required to disclose Scope 3 emissions, when calculating those emissions, if there was any significant overlap in the categories of activities producing the Scope 3 emissions, a registrant must describe the overlap, how it accounted for the overlap, and the effect on its disclosed total Scope 3 emissions.	
	None.	Any GHG emissions metrics required to be disclosed pursuant to this section in a registrant's annual report on Form 10-K filed with the Commission 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 metrics disclosure relates, or may be included in an amended annual report on Form 10-K no later than the due date for such Form 10-Q. If the registrant is a foreign private issuer, such information may be disclosed in an amendment to its annual report on Form 20-F, which shall be due no later than 225 days after the end of the fiscal year to which the GHG emissions metrics disclosure relates.
	None.	In the case of a registration statement filed under the Securities Act or filed on Form 10 or Form 20-F of the Exchange Act, any GHG emissions metrics required to be disclosed pursuant to the Final Rule must be provided as of the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement.
Attestation	A registrant that is required to provide Scope 1 and Scope 2 emissions disclosure pursuant to the proposed rule and that is an accelerated filer or a large accelerated filer must include an attestation report covering such disclosure in the relevant filing.	A registrant that is required to provide Scope 1 and/or Scope 2 emissions disclosure must include an attestation report covering such disclosure in the relevant filing, subject to the following provisions: • For accelerated filers, beginning the third fiscal year after the

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	For filings made by an accelerated filer or a large accelerated filer for the second and third fiscal years after the compliance date, the attestation engagement must be at least at a limited assurance level and cover the registrant's Scope 1 and Scope 2 emissions disclosure. For filings made by an accelerated filer or large accelerated filer for the fourth fiscal year after the compliance and thereafter, the attestation engagement must be at a reasonable assurance level and, at a minimum, cover the registrant's Scope 1 and Scope 2 emissions disclosures. Any attestation report required under this section must be provided pursuant to standards that are publicly available at no cost and are established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment. An accelerated filer or a large accelerated filer obtaining voluntary assurance prior to the first required fiscal year must comply with the voluntary disclosure of assurance requirements of the proposed rule. Voluntary assurance obtained by an accelerated filer or a large accelerated filer thereafter must follow the requirements of other attestation provisions of the proposed rule and must use the same attestation standard as the required assurance over Scope 1 and Scope 2.	compliance date and thereafter, the attestation engagement must be at least at a limited assurance level. • For large accelerated filers, beginning the third fiscal year after the compliance date, the attestation engagement must be at least at a limited assurance level. • For large accelerated filers, beginning the seventh fiscal year after the compliance date, the attestation engagement must be at a reasonable assurance level. Any attestation report required under the Final Rule must be provided pursuant to standards that are publicly available at no cost or that are widely used for GHG emissions assurance and established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment. A registrant that is required to provide Scope 1 and/or Scope 2 emissions disclosure that obtains voluntary assurance over its GHG emissions disclosure prior to the first required fiscal year for assurance must comply with the voluntary disclosure assurance section of the Final Rule, and registrants obtaining voluntary assurance after the first required fiscal year in addition to required assurance must also comply with attestation provider requirements of the Final Rule.
	The GHG emissions attestation report required by the proposed rule must be prepared and signed by a GHG emissions attestation provider. The GHG emissions attestation report required by the proposed rule must be included in the separately captioned "Climate-Related Disclosure" section in the filing. The form and content of the attestation report must follow the requirements set forth by the attestation standard (or standards) used by the GHG emissions attestation provider. The proposed provides a minimum amount of disclosures that must be included in the report.	The GHG emissions attestation report required by the Final Rule must be prepared and signed by a GHG emissions attestation provider. The form and content of the attestation report must follow the requirements set forth by the attestation standard (or standards) used by the GHG emissions attestation provider.

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	A large accelerated filer and an accelerated filer must disclose the following information within the separately captioned "Climate-Related Disclosure" section in the filing, after requesting relevant information from any GHG emissions attestation provider as necessary:
	• Whether the attestation provider has a license from any licensing or accreditation body to provide assurance, and if so, the identity of the licensing or accreditation body, and whether the attestation provider is a member in good standing of that licensing or accreditation body.
	• Whether the GHG emissions attestation engagement is subject to any oversight inspection program, and if so, which program.
	• Whether the attestation provider is subject to record-keeping requirements with respect to the work performed for the GHG emissions attestation engagement and, if so, the applicable record-keeping requirements and the duration of those requirements.
		A large accelerated filer and an accelerated filer must disclose, alongside the GHG emissions disclosure to which the attestation report relates:
		• Whether the GHG emissions attestation provider is subject to any oversight inspection program, and if so, which program and whether the GHG emissions attestation engagement is included within the scope of authority of such oversight inspection program.
		• Whether any GHG emissions attestation provider that was previously engaged to provide attestation over the registrant's GHG emissions disclosure pursuant to the Final Rule for the fiscal year period covered by the attestation report resigned or was dismissed. If so:
		  o State whether the former GHG emissions attestation provider resigned, declined to stand for re-appointment, or was dismissed and the date thereof.
		  o State whether during the performance of the attestation engagement for the fiscal year period covered by the attestation report there were any disagreements with the former GHG emissions attestation provider on any matter of measurement or disclosure of GHG emissions or attestation scope of procedures.
		  o If applicable, describe each disagreement and state whether the registrant has authorized the former GHG emissions attestation provider to respond fully to the inquiries of the successor GHG emissions attestation provider concerning the subject matter of each such disagreement.

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	A registrant that is not required to include a GHG emissions attestation report pursuant to the proposed rule must disclose within the separately captioned "Climate-Related Disclosure" section in the filing the following information if the registrant's GHG emissions disclosures were subject to third-party attestation or verification: • Identification of the provider of such attestation or verification. • Description of the attestation or verification standard used. • Description of the level and scope of attestation or verification provided. • Brief description of the results of the attestation or verification. • Whether the third-party service provider has any other business relationships with or has provided any other professional services to the registrant that may lead to an impairment of the service provider's independence with respect to the registrant. • Any oversight inspection program to which the service provider is subject.	A registrant that is not required to include a GHG emissions attestation report pursuant to the Final Rule must disclose in the filing the following information if the registrant's GHG emissions disclosure in the filing were subject to third-party assurance: • Identification of the service provider of such assurance. • Description of the assurance standard used; • Description of the level and scope of assurance services provided. • Brief description of the results of the assurance services. • Whether the service provider has any ***material*** business relationships with or has provided any ***material*** professional services to the registrant. • Whether the service provider is subject to any oversight inspection program, and if so, which program and whether the assurance services over GHG emissions are included within the scope of authority of such oversight inspection program.
	None.	A registrant must include the attestation report and disclosure required by this section in the filing that contains the GHG emissions disclosure to which the report and disclosure relate. If, in accordance with the requirements in the Final Rule, a registrant elects to incorporate by reference its GHG emissions disclosure from its Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions disclosure relates or to provide this information in an amended annual report on Form 10-K or 20-F, then the registrant must include an express statement in its annual report indicating its intention to incorporate by reference the attestation report from either a quarterly report on Form 10-Q or amend its annual report on Form 10-K or Form 20-F to provide the attestation report by the due date specified in the Final Rule.

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Safe harbor	A statement within the coverage of the GHG emissions metrics section of the proposed rule that is made by or on behalf of a registrant is deemed not to be a fraudulent statement unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith. This applies to any statement regarding Scope 3 emissions that is disclosed pursuant to the proposed rule and made in a document filed with the Commission.	All information required by the Final Rule as it relates to transition plans, scenario analyses, internal carbon price and climate-related targets or goals is considered a forward-looking statement for purposes of the statutory safe harbors, except for historical facts.
Interactive Data Requirement	Disclosure must be provided in an Interactive Data File as required by Rule 405 of Regulation S-T.	Disclosure must be provided in an Interactive Data File as required by Rule 405 of Regulation S-T.
Exhibits	None.	Added Item 601(27) for GHG emission letters from attestation providers. Clarified attestation letters are not required to be provided on a Form S-4 or F-4 with respect to a company that makes an election to provide information at a level prescribed by Form S-3 or F-3 and the form would not require the exhibit if it were registering a primary offering.
Regulation S-X		
Disclosure related to severe weather events and other information		
Contextual information	Provide contextual information, describing how each specified metric was derived, including a description of significant inputs and assumptions used, and, if applicable, policy decisions made by the registrant to calculate the specified metrics.	Provide contextual information, describing how each specified financial statement effect disclosed under this section was derived, including a description of significant inputs and assumptions used, significant judgments made, other information that is important to understand the financial statement effect and, if applicable, policy decisions made by the registrant to calculate the specified disclosures.
Disclosure thresholds	Disclosure of the financial impact on a line item in the registrant's consolidated financial statements (including any impacts of identified climate-related risks and climate-related opportunities) is not required if the sum of the absolute values of all the impacts on the line item is less than one percent of the total line item for the relevant fiscal year.	Disclosure of the aggregate amount of expenditures expensed as incurred and losses is required if the aggregate amount of expenditures expensed as incurred and losses equals or exceeds one percent of the absolute value of income or loss before income tax expense or benefit for the relevant fiscal year. Such disclosure is not required, however, if the aggregate amount of expenditures expensed as incurred and losses is less than $100,000 for the relevant fiscal year.
	Disclosure of the aggregate amount of expenditure expensed or the aggregate	Disclosure of the aggregate amount of capitalized costs and charges incurred

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	amount of capitalized costs incurred pursuant to the expenditure to mitigate risks of severe weather events and other natural conditions and expenditures related to transition activities (including any impacts to climate-related risks and climate-related opportunities) is not required if such amount is less than one percent of the total expenditure expensed or total capitalized costs incurred, respectively, for the relevant fiscal year.	is required if the aggregate amount of the absolute value of capitalized costs and charges equals or exceeds one percent of the absolute value of stockholders' equity or deficit at the end of the relevant fiscal year. Such disclosure is not required, however, if the aggregate amount of the absolute value of capitalized costs and charges is less than $500,000 for the relevant fiscal year.
Financial impacts of severe weather events and other natural conditions	Disclose the impact of severe weather events and other natural conditions on any relevant line items in the registrant's consolidated financial statements during the fiscal years presented. Disclosure must be presented, at a minimum, on an aggregated line-by-line basis for all negative impacts and, separately, at a minimum, on an aggregated line-by-line basis for all positive impacts.	None.
Financial impacts related to transition activities	Disclose the impact of any efforts to reduce GHG emissions or otherwise mitigate exposure to transition risks on any relevant line items in the registrant's consolidated financial statements during the fiscal years presented. Disclosure must be presented, at a minimum, on an aggregated line-by-line basis for all negative impacts and, separately, at a minimum, on an aggregated line-by-line basis for all positive impacts.	None.
Expenditures expensed as incurred and losses resulting from severe weather events and other natural conditions	Disclose separately the aggregate amount of expenditure expensed and the aggregate amount of capitalized costs incurred during the fiscal years presented to mitigate the risks from severe weather events and other natural conditions.	Disclose 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. Disclosure pursuant to this paragraph must separately identify where the expenditures expensed as incurred and losses are presented in the income statement.
Expenditure related to transition activities	Disclose separately the aggregate amount of expenditure expensed and the aggregate amount of capitalized costs incurred during the fiscal years presented to reduce GHG emissions or otherwise mitigate exposure to transition risks. A registrant that has disclosed GHG emissions reduction targets or other climate-related commitments must	None.

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	disclose the expenditures and costs related to meeting its targets, commitments, and goals, if any, in the fiscal years presented.	
Capitalized costs and charges resulting from severe weather events and other natural conditions.	None.	Disclose the aggregate amount of capitalized costs and charges, excluding recoveries, incurred during the fiscal year as a result of severe weather events and other natural conditions. Disclosure pursuant to this paragraph must separately identify where the capitalized costs and charges are presented in the balance sheet.
Carbon offsets and RECs	None.	***If*** carbon offsets or RECs have been used as a ***material*** component of a registrant's plans to achieve its disclosed climate-related targets or goals, disclose: • the aggregate amount of carbon offsets and RECs expensed, • the aggregate amount of capitalized carbon offsets and RECs recognized, and • the aggregate amount of losses incurred on the capitalized carbon offsets and RECs, during the fiscal year. Disclose the beginning and ending balances of the capitalized carbon offsets and RECs for the fiscal year. Disclosure pursuant to this paragraph must separately identify where the expenditures expensed, capitalized costs, and losses are presented in the income statement and the balance sheet. ***If*** a registrant is required to provide disclosure pursuant to this section, then a registrant must state its accounting policy for carbon offsets and RECs as part of the contextual information required by this section.
Recoveries	None.	***If*** a registrant is required to provide disclosure pursuant to this section, then a registrant must state separately the aggregate amount of any recoveries recognized during the fiscal year as a result of severe weather events and other natural conditions for which capitalized costs, expenditures

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		expensed, charges, or losses are disclosed pursuant this section. Disclosure pursuant to this paragraph must separately identify where the recoveries are presented in the income statement and the balance sheet.
Attribution	None.	For purposes of providing disclosure for this section, a capitalized cost, expenditure expensed, charge, loss, or recovery results from a severe weather event or other natural condition when the event or condition is a significant contributing factor in incurring the capitalized cost, expenditure expensed, charge, loss, or recovery. ***If*** an event or condition is a significant contributing factor in incurring a cost, expenditure, charge, loss, or recovery, then the entire amount of such cost, expenditure, charge, loss, or recovery must be included in the disclosure pursuant this section.
Financial estimates and assumptions impacted by severe weather events and other natural conditions	Disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions. If yes, provide a qualitative description of how the development of such estimates and assumptions were impacted by such events.	Disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were ***materially*** impacted by exposures 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 yes, provide a qualitative description of how the development of such estimates and assumptions were impacted by such events, conditions, targets, or transition plans.
Financial estimates and assumptions impacted by transition activities	Disclose whether the estimates and assumptions the registrant used to produce the consolidated financial statements were impacted by risks and uncertainties associated with, or known impacts from, a potential transition to a lower carbon economy or any climate-related targets disclosed by the registrant. If yes, provide a qualitative description of how the development of such estimates and assumptions were impacted by such a potential transition or the registrant's disclosed climate-related targets.	None.

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Impact of identified climate-related risks	A registrant must also include the impact of any climate-related risks (separately by physical risks and transition risks) identified by the registrant pursuant on any of the financial statement metrics disclosed pursuant to the financial impacts, expenditures and financial estimates and assumptions in this section.	None.
Impact of climate-related opportunities	A registrant may also include the impact of any opportunities arising from severe weather events and other natural conditions, any impact of efforts to pursue climate-related opportunities associated with transition activities, and the impact of any other climate-related opportunities, including those identified by the registrant, on any of the financial statement metrics disclosed in this section. If a registrant makes a policy decision to disclose the impact of an opportunity, it must do so consistently for the fiscal years presented, including for each financial statement line item and all relevant opportunities identified by the registrant.	None.

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