SEC ADOPTS FINAL CLIMATE CHANGE DISCLOSURE RULES

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On March 6, 2024, nearly two years after proposed rules were released, the Securities and Exchange Commission ("*SEC*") adopted final rules to require public companies to disclose climate-related information in annual reports and in registration statements, either in a separate, captioned section or in another appropriate section such as risk factors, business or MD&A, or by incorporating the disclosure by reference from a separate SEC filing. The final rules created a new subpart 1500 of Regulation S-K and a new Article 14 of Regulation S-X. Climate-related disclosure will be required of some companies as early as 2026. Key provisions of the final rules are briefly summarized below.

Disclosure Requirements in Final Rules

- *Climate-related risks*. Disclose any material climate-related risks that have materially impacted or are reasonably likely to have a material impact on the company. Disclosure must include whether the risks are short-term or long-term and the actual and potential material impacts of both physical risks (e.g., business operations in a part of the world likely to be impacted by climate change), including whether these physical risks are acute or chronic, and transitional risks (e.g., the costs of complying with new climate regulations or changing consumer or investor preferences).

- *Climate-related governance*. Disclose a description of the board's oversight of climate-related risks, including the identification of any board committee responsible for climate-related risk oversight. In addition, if the company has a climate-related target or goal, then it must disclose whether and how the board oversees progress against that target or goal. Disclosure is also required regarding management's role in assessing and managing material climate risks.

- *Climate-related strategy*. Disclose a description of whether and how the company considers impacts of its climate-related risks as part of its strategy, financial planning and capital allocation and whether the climate-related risks disclosed have been integrated into the company's business model or strategy. Examples of this disclosure may include the role of targets and transition plans in the company's business strategy, quantitative and qualitative descriptions of material expenditures incurred or material impacts on financial estimates and assumptions relating to risk mitigation and adaptation.

- *Climate-related risk management.* Disclose the processes the company has for identifying, assessing, and managing material climate-related risks, including whether it has incurred or is materially likely to incur a material physical or transition risk and the extent to which the company plans to accept, adapt to or mitigate that risk, and how this risk management has been integrated into the company's overall risk management system.

- *Climate-related targets and goals.* Disclose any climate-related target or goal if the target or goal has materially affected or is likely to materially affect the company's business. Disclosure here should include the scope of activities included in the target, the defined time horizon by which the target is intended to be achieved, and how target progress will be tracked, among other factors.

• *Greenhouse gas ("GHG") emissions metrics.* Large accelerated filers and non-exempt accelerated filers must disclose Scope 1 and Scope 2 GHG emissions if those emissions are material, including the methodologies used in calculating those emissions. Scope 1 emissions are from operations owned or controlled by the company (e.g., company facilities and company vehicles). Scope 2 emissions are from the generation of purchased or acquired electricity, steam, heat or cooling that is consumed by operations controlled or owned by the company.

• *Attestation of Scope 1 and Scope 2 emissions.* Large accelerated filers and non-exempt accelerated filers must have a "limited assurance" attestation of Scope 1 and Scope 2 emissions beginning in the third fiscal year after GHG emissions are disclosed. Large accelerated filers must have a "reasonable assurance" attestation beginning with the seventh fiscal year after GHG emissions are disclosed.

• *Financial statement disclosure of severe weather events.* Disclose the financial impact (e.g., capitalized costs and expenditures expensed) of severe weather events and other natural conditions and transition-related activities in the notes to the audited financial statements. This disclosure is to include the basis for calculating the effects of severe weather events on the financial statements for the periods at issue.

Differences from Proposed Rules

The final rules scaled back the proposed rules in several important ways, including the following:

• Smaller reporting companies ("*SRCs*") and emerging growth companies ("*EGCs*") are exempt from the Scope 1 and Scope 2 GHG emissions disclosure requirements, and large accelerated filers and non-exempt accelerated filers only must disclose when those emissions are "material" under a reasonable investor standard. The final rules contain several examples of when the SEC may consider GHG emissions disclosure material.

• The requirement for Scope 3 GHG emissions (indirect value chain) disclosure was eliminated for all companies.

• Disclosure requirements for board oversight were removed, including the requirement to disclose board member expertise in climate-related risks and the nature of the expertise.

Compliance Schedule

Reporting requirements under the final rules are based on fiscal years beginning in a given calendar year, with the disclosure obligation being in the subsequent year. In the table below, for example, FYB 2025 would include fiscal years beginning on January 1 through December 31, 2025, with the corresponding filing occurring in 2026.

Filer status	All Regulation S-K and S-X disclosures, except as noted in this table	Financial expenditures (Regulation S-K items 1502(d)(2), 1502(e)(2) and 1504(c)(2))	Inline XBRL tagging for subpart 1500 of Regulation S-K
Large accelerated filer	FYB 2025	FYB 2026	FYB 2026
Accelerated filer (non-SRCs or EGCs)	FYB 2026	FYB 2027	FYB 2026
Non-accelerated filer, SRC or EGC	FYB 2027	FYB 2028	FYB 2027

Filer status	Scope 1 and Scope 2 emissions disclosure	Limited assurance attestation	Reasonable assurance attestation
Large accelerated filer	FYB 2026	FYB 2029	FYB 2033
Accelerated filer (non-SRCs or EGCs)	FYB 2028	FYB 2031	N/A
Non-accelerated filer, SRC or EGC	N/A	N/A	N/A

As of the date of this alert, and as expected, the final rules have been challenged in court, but have not been stayed. Notwithstanding this uncertainty, we believe companies, especially large accelerated filers, that do not have climate reporting processes in place should begin to review and assess their infrastructure for capturing and validating the information required under the final rules.

For any questions, please contact **Craig Fischer** (716.848.1266), **Timothy Ho** (416.595.2673), **Brendan Stone** (716.848.1474), **John Zak** (716.848.1253), or any member of our **Corporate & Securities Practice**.

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