ON**POINT** / A legal update from Dechert's Corporate and Securities and Financial Services Groups

SEC Adopts Final, Comprehensive Climate Disclosure Rules

Authored by Julien Bourgeois, Abbi Cohen, Brenden Carroll, Rick Horvath, Alex Karampatsos, Stephen Leitzell, John Ix, Tyler Payne and Jessica Warshaw

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Key Takeaways

The SEC adopted a comprehensive and uniform regulatory framework for climate-related disclosures by public companies. Although pared back from their scope as initially proposed, the final rules represent a major expansion of the SEC's disclosure regime. The rules, which apply equally to business development companies, address climate-related risk by:

- Mandating new disclosures to be made in annual reports and in registration statements regarding oversight of climate-related risk, climate-related impacts on the business, and greenhouse gas emissions.
- Requiring large accelerated filers and accelerated filers to provide attestations of their disclosure of Greenhouse Gas Protocol Scope 1 and Scope 2 emissions. Notably, the final rules do not require disclosure Scope 3 emissions.
- Requiring certain climate-related disclosure in the notes to registrants' financial statements.

The final rules provide for phased-in compliance dates depending on the status of the filer and the particular requirement, as described in detail below (see "Compliance Date Phase-In Periods"). Most of the new disclosures will be required of large accelerated filers in 2026 for fiscal year 2025, with obligations for accelerated filers other than smaller reporting companies and emerging growth companies beginning with fiscal year 2026 and obligations for smaller reporting companies, emerging growth companies and non-accelerated filers beginning with fiscal year 2027.

The final rules are expected to impose significant costs on many issuers, as detailed further below (see "Expected Costs of Compliance"). The potential compliance burden has already led to challenges brought by companies, industry groups, and 25 states' Attorneys General in four federal courts of appeal (as of publication of this OnPoint), with a panel of the Fifth Circuit Court of Appeals issuing a temporary stay of the rules on March 15, 2024.

Immediate Steps

Notwithstanding the Fifth Circuit panel's stay and other ongoing court challenges, issuers should not delay taking initial steps toward preparing for compliance with the new rules—particularly those issuers who must begin tracking relevant data in 2025 to make the required disclosures in 2026. These initial steps include:

- Reviewing the company's current processes for climate-related disclosure. This review should encompass both SEC-filing disclosures, risk factors and financial reporting, as well as disclosures made in other forums, with an eye toward informing the board and senior management of the processes for making, and controls over, these disclosures. The company should also conduct a gap analysis against the rules to identify what data is and is not yet being gathered that will be needed for compliance with the rules, and plan for how to fill any such gaps,

- Preparing for financial statement disclosures. As discussed below (see “Expenditure Effects”), the new rules mandate disclosure of capitalized costs, expenditures expensed, charges and losses incurred as a result of severe weather events and other natural conditions, subject to certain thresholds. These disclosures are to be made in a note to the audited financial statements and therefore will require coordination among finance personnel and with the company’s independent auditor.

- Considering how the board of directors oversees the disclosure of climate-related risk. Although the SEC does not prescribe that these risks be dealt with at the board level, the new disclosure regime’s comprehensiveness (and the related significance for investors that such comprehensiveness signals) makes it prudent matters for the board to ensure the existence and monitoring of reporting lines to the board relating to the company’s climate-related risk disclosures.

- Hiring consultants to produce the data necessary for the mandated disclosures and eventual attestation requirement, as described in detail below (see “Attestation of Scope 1 and Scope 2 Emissions Disclosure”).

- Ensuring adequate in-house resource availability. The climate-disclosure rules, though scaled back from their initially proposed scope, still represent a major expansion of the SEC disclosure regime. Compliance with the rules will require broad understanding of the new obligations at the board, managerial and employee levels, where relevant. Achieving that degree of understanding will require investment of time and budgetary resources.

- Creating a detailed action plan based on these steps and, if applicable, integrating it with any existing plans for compliance with other new climate-related disclosure regimes, in particular the European Union’s Corporate Sustainability Reporting Directive and the State of California’s two recently passed climate disclosure laws (see “Impact of Other Laws” below).

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On March 6, 2024, the U.S. Securities and Exchange Commission (the “SEC”) **adopted** by a 3-2 vote its long-awaited, comprehensive rules for enhancing and standardizing climate-related disclosures by public companies in periodic disclosure reports and in registration statements for public offerings (the “Final Rules”). The Final Rules were first proposed on March 21, 2022, and generated over 4,500 unique comment letters and over 18,000 form letters in response to the proposing release.[1]

Following concerns voiced in many of the comments that the rules as proposed would prove overly burdensome and costly and subject to legal challenge, the SEC significantly pared back the scope of the rules, such as by limiting to larger reporting companies the requirement to disclose greenhouse gas emissions, eliminating the Greenhouse Gas Protocol (“GHG”) Scope 3 emissions disclosure requirement altogether, adding materiality qualifiers to many disclosure requirements, and generally making many of the disclosure provisions less prescriptive in the Final Rules. However, even with these changes, the length and complexity of the Final Rules can still be expected to impose significant disclosure burdens and related expenses on issuers, particularly those that do not yet have processes in place to accumulate the information necessary to provide the required disclosures.

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[1] For a summary of the rule proposal, *see Dechert OnPoint*, “SEC Proposes Comprehensive Climate-Related Disclosure Rules,” available here.

Background

The SEC maintains in the adopting release for the Final Rules that while it has adopted various rules and guidance addressing disclosure of material environmental issues since the early 1970s, investors continue to seek more information from public companies, both to assess how climate-related risks affect a registrant's business and financial condition and to assess board and management oversight of climate-related risks. The SEC also believes that investors wish to see more standardized information to help them make fully informed investment decisions. The SEC notes that issuers may seek to provide the information that investors want, yet find current disclosure practices to be fragmented and inconsistent. In light of those stated needs, the SEC adopted the Final Rules to require disclosure about the material climate-related risks that registrants face and how registrants manage those risks.

In the Final Rules, the SEC contends it has struck a balance between eliciting better disclosure and limiting compliance costs, by proposing rules based on the recommendations of the Task Force on Climate-Related Financial Disclosures ("TCFD")[2]—a framework that the SEC says has been widely accepted by issuers, investors and other market participants. The SEC explains that the modifications made to the Final Rules will help address commenter concerns about both the direct costs of meeting the new disclosure requirements for registrants that do not yet have a system in place for measuring and disclosing climate-related risks, and the related indirect costs such as "heightened litigation risk" and the risk of potentially disclosing proprietary information.

Although the Final Rules reflect modifications in response to critiques about the proposed rules, the Final Rules are still likely to impose significant costs on registrants. Indeed, within a week of the issuance of the adopting release, several petitions were filed by public and private actors in various courts to challenge the Final Rules (see "The Final Rules Going Forward" below). These lawsuits may ultimately affect the timing for compliance with the Final Rules, if not the content of the Final Rules themselves.

Though focused on public companies, the Final Rules also have direct and indirect implications for asset managers (see "Implications for Asset Managers" below). Although they do not apply to registered investment companies, the Final Rules will apply to business development companies ("BDCs"),[3] certain exchange-traded products, REITs, and issuers of registered non-variable insurance contracts despite the recommendation by several commenters that the SEC exempt these investment products. The Final Rules will also likely impact both the timing and the substance of the SEC's proposed rulemaking on environmental, social and governance ("ESG") investment practices and disclosures for registered investment advisers and registered investment companies. However, the Final Rules will make new data available to asset managers about the companies in which they may invest.

New Regulatory Framework

The Final Rules require new climate-related disclosures in a registrant's registration statements and annual reports by adding the following sections to the current disclosure regulations:

- A new subpart 1500 of Regulation S-K, which requires registrants to disclose information about climate-related risks that are reasonably likely to have material impacts on the registrant, including on its strategy, results of operations and financial condition, as well as disclosures regarding a registrant's activities, if any,

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[2] *See* https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf.

[3] A BDC is a closed-end investment company that has filed a registration statement or has a class equity securities registered pursuant to Section 12 of the Exchange Act and elects to be regulated as a business development company.

to mitigate or adapt to a material climate-related risk. Included in subpart 1500 is a disclosure and attestation requirement for large accelerated filers ("LAFs") and accelerated filers ("AFs") regarding GHG Scope 1 and Scope 2 emissions.

- A new Article 14 of Regulation S-X, which requires certain climate-related disclosures to be included in a note to a registrant's audited financial statements. These disclosures have a narrower scope than was initially proposed, with the focus on disclosure of capitalized costs, expenditures expensed, charges and losses incurred as a result of severe weather events and other natural conditions, and capitalized costs, expenditures expensed and losses related to carbon offsets and renewable energy credits ("RECs"), subject to disclosure thresholds.

The Final Rules apply to companies with Exchange Act reporting obligations pursuant to Exchange Act Section 13(a) or Section 15(d) and companies filing a Securities Act or Exchange Act registration statement. The only change in application from the proposed rules is that the Final Rules do not apply to private companies that are parties to business combination transactions, as defined by Securities Act Rule 165(f), involving a securities offering registered on Forms S-4 and F-4. As for disclosures on Exchange Act periodic reports, the only time a registrant must disclose climate-related information in a quarterly report on Form 10-Q is when it elects to disclose its Scopes 1 and/or 2 emissions pursuant to Item 1505 of Regulation S-K, as described below. In all other ways, the only relevant periodic report for purposes of compliance with the Final Rules is the annual report on Form 10-K.

The SEC had proposed that registrants include their Regulation S-K climate-related disclosures in a separately captioned "Climate-Related Disclosure" section of the filing or otherwise incorporate disclosures made in other parts of the filing by reference into the separately captioned section. The Final Rules do away with this requirement, leaving the placement of disclosures in each filing to each registrant. The SEC advises, though, that if a registrant chooses to include the required disclosures in other sections of the filing (e.g., Risk Factors, Description of Business, MD&A), the registrant consider cross-referencing those disclosures in a separately captioned section addressing climate-related disclosures.

The SEC acknowledged the suggestion made by commenters to adopt a new form for climate-related disclosures. The SEC decided instead to take the approach of amending existing forms for registration statements and annual reports for the sake of maintaining consistency with the SEC's integrated disclosure system and to improve the transparency and comparability of companies' climate-related disclosures.

Consistent with the annual reporting requirement in other contexts (and in a change from the proposed rules), the Final Rules do not require registrants to disclose any material change to the climate-related disclosures provided in a registration statement or annual report in its Form 10-Q or, in certain circumstances, Form 6-K for a registrant that is a foreign private issuer that does not report on domestic forms.

Disclosure Requirements and Modifications from Proposed Rules

As adopted in the Final Rules, new subpart 1500 of Regulation S-K mandates the following disclosures, with certain modifications from the proposed rules as summarized below.

Board and management oversight (Items 1501(a) and 1501(b))

The Final Rules require a registrant to disclose, as applicable, certain information regarding the board's oversight of climate-related risks and management's role in assessing and managing those risks. This disclosure includes

identifying any board committee or subcommittee responsible for the oversight of climate-related risks, if a registrant has such a committee or subcommittee, describing whether and how the board of directors oversees progress against disclosed climate-related targets, goals, or transition plans, and describing the processes by which the board or any board committee or subcommittee is informed about climate-related risks.[4]

The SEC emphasizes in the adopting release that the Final Rules are focused on disclosure and do not require, and are not formulated to prompt, registrants to change their governance or other business practices. As such, the board-oversight disclosures provided for in the Final Rules are not required for registrants that do not oversee climate-related risks at the board level.[5, 6]

The Final Rules contain more prescriptive disclosure requirements with respect to management than are required for the board, such as disclosing what managers or management committees are responsible for monitoring climate-related risks, the managers' relevant expertise, and the processes by which they stay informed of climate-related risks and report on those risks to the board or board committee. However, the SEC has limited this disclosure in the Final Rules to material climate-related risks. Furthermore, as with board-oversight disclosure, the Final Rules do not impose any disclosure requirements on registrants that do not exercise management oversight of climate-related risks.

Climate-related risks (Item 1502(a))

The Final Rules require the disclosure of any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its business strategy, results of operations, or financial condition.[7] The Final Rules provide that in describing any climate-related risks that have materially impacted or are reasonably likely to have a material impact, a registrant should describe whether such risks are reasonably likely to

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4 The Final Rules eliminate the requirement in the proposed rules to describe the frequency of these discussions, as well as the proposed requirements to disclose the identity of specific board members responsible for climate-risk oversight and the expertise that any board member has in climate-related risks. The Final Rules also eliminate the proposed requirement to disclose whether and how the board of directors establishes any final or interim targets or goals and other more prescriptive disclosure requirements regarding board oversight.

5 In this regard, the Final Rules for climate-related disclosure are notable for how they diverge from other SEC disclosure rules that do incentivize particular governance practices through required disclosures. For example, the SEC in Item 407(d)(5)(i)(C) of Regulation S-K requires a registrant that does not have a financial expert serving on its board's audit committee to explain why it does not. Similarly, though the SEC itself does not mandate board-diversity disclosures, the SEC in 2021 approved Nasdaq's Rule 5605(f) that requires Nasdaq-listed companies to have at least two diverse directors on their board or publicly disclose why they do not (the Nasdaq's board-diversity rules are being challenged in the Fifth Circuit Court of Appeals). The Final Rules on climate-related disclosure do not contain analogous disclosure obligations.

6 It is worth remembering that the SEC is a regulator of securities law, not corporate law. That the SEC takes no position for purposes of disclosure under the Final Rules on whether a company should or should not address climate-related risk at the board level has no bearing on the board's satisfaction of its fiduciary duties to its shareholders beyond ensuring compliance with the Final Rules.

7 This represents a small change from the proposed rules, which defined impact on the registrant by reference to its business strategy and consolidated financial statements.

manifest in the short term (i.e., the next 12 months) and separately in the long term (i.e., beyond the next 12 months), as opposed to the short, medium, and long term in the proposed rules.[8]

The Final Rules define "climate-related risks" (a defined term in Item 1500) to mean the actual or potential negative impacts of climate-related conditions and events on a registrant's business, results of operations, or financial condition. As a modification from the proposed rules, the SEC eliminated the reference to negative climate-related impacts on a registrant's value chain from the definition of climate-related risks. This change means that a climate-related risk involving a registrant's value chain would generally not need to be disclosed except where such risk has materially impacted or is reasonably likely to materially impact the registrant's business, results of operations, or financial condition.

The Final Rules maintain a distinction made in the proposed rules between "physical risks," such as harm to the business arising from climate-related disasters, and "transition risks" to the business associated with a potential transition to a less carbon-intensive economy.[9] Under the Final Rules, a registrant that has identified a climate-related risk pursuant to Item 1502 must disclose whether the risk is a physical risk or transition risk and provide information necessary for an understanding of the nature of the risk presented and the extent of the registrant's exposure to the risk. The Final Rules provide a non-exclusive list of disclosures that a registrant must disclose as applicable:

- If a physical risk, whether it may be categorized as an acute or chronic risk, and the geographic location and nature of the properties, processes, or operations subject to the physical risk; and

- If a transition risk, whether it relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), or other transition-related factors, and how those factors impact the registrant.

The Final Rules do not require a discussion about the interaction of two related physical risks, as had been proposed, nor do the Final Rules require registrants to disclose the location and nature of the properties or operations subject to the physical risk, such as providing the relevant ZIP code.

The proposed rules required other highly specific disclosures about physical risks, such as disclosures relating to flooding and the location of assets in regions of high water stress, that are no longer required in the Final Rules.[10] The Final Rules do away with this level of granularity, sufficing with the general condition applicable to both physical and transition risk disclosure that, when describing a material climate-related risk, a registrant must provide

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8 The SEC clarified in the adopting release that these revisions do not create any substantive differences compared to the proposed rules but should facilitate compliance because many registrants should be familiar with the terminology used, which aligns with other SEC rules relevant to risk assessment and the TCFD recommendations.

9 These risks include, but are not limited to: increased costs attributable to climate-related changes in law or policy; reduced market demand for carbon-intensive products leading to decreased sales, 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; reputational impacts (including those stemming from a registrant's customers or business counterparties) that might trigger changes to market behavior; changes in consumer preferences or behavior; or changes in a registrant's behavior.

10 In particular, the rule proposal would have required a registrant that faces a material physical risk due to flooding or water stress to disclose the percentage of buildings, plants, or properties that are located in flood-hazard areas or the amount and percentage of assets located in water-stressed areas.

information necessary to an understanding of the nature of the risk presented and the extent of the registrant's exposure to the risk.

Climate-related impacts on the business (Item 1502(b))

Having disclosed the material climate-related risks to the business, a registrant is required to describe how those risks have materially impacted or are reasonably likely to have a material impact on the registrant, including on its strategy, business model and outlook. The types of impacts to be disclosed include the following non-exclusive list, as applicable: impacts on business operations; products or services; suppliers, purchasers, or counterparties to material contracts, to the extent known or reasonably available (not "suppliers and other parties in [a registrant's] value chain," as had been worded in the proposed rules); activities for mitigating or adapting to climate-related risks; and R&D expenditures. In the adopting release, the SEC emphasizes the addition of a materiality qualifier where there was none in the proposed rules, explaining that a registrant is only required to disclose material impacts of climate-related risks that it has identified in response to Item 1502(a), and, accordingly, if none of the listed types of impacts or any other impacts are material, a registrant need not disclose them.

Material impacts of climate-related risks (Item 1502(c))

Item 1502(c) requires a registrant to discuss whether and how the registrant considers any material impacts described in response to Item 1502(b) as part of its strategy, financial planning, and capital allocation. Similar to the proposed rules, but modified to make Item 1502(c) less prescriptive, the Final Rules require a registrant to include in its disclosure, as applicable:

- Whether the impacts of the climate-related risks described in response to Item 1502(b) 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
- How any of the targets referenced in Item 1504 or in a described transition plan relate to the registrant's business model or strategy.

The targets and goals disclosure requirement in the Final Rules (see "Targets and goals disclosure (Item 1504)" below) explicitly requires disclosure concerning a registrant's use of carbon offsets or RECs if they constitute a material component of a registrant's plan to achieve its climate-related targets or goals. For that reason, the SEC eliminated a proposed rule to also disclose carbon offsets and RECs in the context of Item 1502(c).[11]

Narrative discussion of material impacts of climate-related risks (Item 1502(d))

As proposed, Item 1502(d) would have required a discussion that included the financial statement metrics to be disclosed pursuant to proposed Article 14 of Regulation S-X. In a change from the proposed rules, Item 1502(d)(2) as adopted requires a registrant to describe quantitatively and qualitatively the material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from activities to mitigate or adapt to climate-related risks disclosed pursuant to Item 1502(b)(4)—activities for mitigating or adapting to climate-related risks. To accommodate compliance, the Final Rules provide an additional phase-in for the

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[11] Item 1502(c) has been streamlined in other ways as well. Eliminated in the Final Rules is the proposed requirement to provide both current and forward-looking disclosures, as well as a proposed requirement to describe how GHG emissions metrics relate to the registrant's business model or business strategy.

requirement to disclose this information in the context of Item 1502. Accordingly, a registrant will not be required to comply with the Item 1502(d)(2) requirement until the fiscal year immediately following the fiscal year of its initial compliance date for the subpart 1500 disclosures based on its filer status (see "Compliance Date Phase-In Periods" below).

Transition plans (Item 1502(e))

In the Final Rules, the SEC significantly streamlines the transition plan disclosure provision so that the description of a transition plan is only required if a registrant has adopted the plan to manage a material transition risk. Also, unlike the proposed rules, the Final Rules do not list the types of transition risks and factors related to those risks that must be disclosed, if applicable. Instead, a registrant that is required to provide transition plan disclosure will have the flexibility to provide disclosure that addresses the particular facts and circumstances of its material transition risk. These disclosures are meant to be specific to each registrant and its business operations rather than boilerplate responses.

The Final Rules require a registrant, as part of its updating disclosure, to include quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the disclosed actions taken under the plan.[12] While this provision is similar to Item 1502(d), Item 1502(e) differs in that it is intended to elicit disclosure about material expenditures and material impacts on financial estimates and assumptions that directly result from actions taken under a transition plan (e.g., material expenditures made for climate-related research and development). As under Item 1502(d), when responding to Item 1502(e), a registrant has the flexibility to explain qualitatively the nature of a material expenditure or material impact on its financial estimates or assumptions and how it directly resulted from the disclosed actions taken under the plan.

A registrant that has adopted a transition plan is required to update its disclosure about its transition plan each fiscal year by describing the actions taken during the year to achieve the plan's targets or goals. On a voluntary basis, a registrant can also use this section to describe how it plans to achieve any identified climate-related business opportunities.

In the adopting release, the SEC emphasizes that it is not mandating that registrants adopt a transition plan, and that if a registrant does not have a plan, no disclosure is required. To accommodate compliance, the Final Rules provide a phase-in for the requirement to disclose this information in the context of Item 1502(e)(2). Accordingly, a registrant will not be required to comply with the Item 1502(d)(2) requirement until the fiscal year immediately following the fiscal year of its initial compliance date for the subpart 1500 disclosures based on its filer status (see "Compliance Date Phase-In Periods" below).

Scenario analysis (Item 1502(f))

Under Item 1502(f), as modified from the proposed rules, 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 scenario analysis, a registrant determines that a climate-related risk is reasonably likely to have a material impact on its business, results of operations, or financial condition, then the registrant must describe each such scenario, including a brief description of the parameters, assumptions, and analytical choices used, as well as the expected

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12 The proposed rules would have generally required the disclosure of the relevant metrics and targets used to identify and manage transition risk under a transition plan.

material impacts, including financial impacts, on the registrant under each such scenario. Of note, the SEC is not actually mandating that registrants conduct scenario analysis.

The Final Rules clarify that the disclosure required by this provision should concern the registrant's use of scenario analysis rather than any other analytical tools.[13] The SEC notes that the TCFD's guidance discusses scenario analysis as the primary tool to help companies assess the impacts of climate-related risks on their business strategies, and therefore this clarification should eliminate any confusion about what other analytical tools might fall under the scope of the requirements.

The SEC in the adopting release also notes the "brief" modifier of the discussion of the "parameters, assumptions, and analytical choices used," which the SEC maintains will, when combined with the materiality qualifier for the disclosure requirement, help elicit disclosure that neither burdens investors with immaterial detail nor unduly adds to a registrant's compliance burden.

Maintained internal carbon price (Item 1502(g))

As slightly modified from the proposed rules with the addition of a materiality qualifier, Item 1502(g) requires a registrant that uses internal carbon pricing to disclose certain information about the internal carbon price, if such use is material to how it evaluates and manages a climate-related risk that, in response to Item 1502(a), it has identified as having materially impacted or is reasonably likely to have a material impact on the registrant, including on its business strategy, results of operations, or financial condition. As defined in Item 1500, an "internal carbon price" is an estimated cost of carbon emissions used internally within an organization. Internal carbon pricing may be used by a registrant, among other purposes, as a planning tool to help identify climate-related risks and opportunities, as an incentive to drive energy efficiencies to reduce costs, and to quantify the potential costs the company would incur should a carbon price be put into effect.

If a registrant's use of internal carbon pricing is material, then the Final Rules (similar to the proposed rules) require it to disclose in units of the registrant's reporting currency:

- The price per metric ton of carbon dioxide equivalent ("CO_2e"); and
- The total price, including how the total price is estimated to change over the time periods referenced in Item 1502(a), as applicable.

The Final Rules eliminate the proposed requirements to describe how a registrant uses an internal carbon price to evaluate and manage climate-related risks and the rationale for selecting the internal carbon price applied. Similar to the proposed rule, though, if a registrant uses more than one internal carbon price to evaluate and manage a material climate-related risk, it must provide the required disclosures for each internal carbon price and disclose its reasons for using different prices.

Risk management (Item 1503)

Registrants are required to disclose any processes the registrant has for identifying, assessing, and managing material climate-related risks. If a registrant has not identified a material climate-related risk, no disclosure is

[13] The proposed rules would have required a registrant to disclose "any analytical tools, such as scenario analysis" that it uses to assess the impact of climate-related risks on its business. The Final Rules eliminate the reference to "any analytical tools."

required.[14] The SEC clarifies that when describing its processes for identifying, assessing, and managing material climate-related risks, a registrant will be able to determine which factors are most significant, and therefore should be addressed, based on its particular facts and circumstances.

Targets and goals disclosure (Item 1504)

The Final Rules require a registrant to disclose any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition. Similar to the proposed rules, Item 1504 requires disclosure, as applicable, of how the registrant intends to meet its climate-related targets or goals. However, the Final Rules specify that this discussion of prospective activities need only be qualitative. The SEC declined to adopt the proposed requirement to disclose any interim targets set by the registrant. The SEC did, however, add the requirements that a registrant include in its targets and goals disclosure a discussion of any material impacts to the registrant's business, results of operations, or financial condition as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal. This discussion must include 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.

Item 1504(b) in the Final Rules requires a registrant disclosing its targets and goals pursuant to Item 1504 to provide any additional information or explanation necessary to an understanding of the material impact or reasonably likely material impact of the target or goal. A non-exhaustive list of potential disclosure items includes, as applicable, a description of:

- 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.
- A qualitative description of how the registrant intends to meet its climate-related targets or goals.

The Final Rules do not include "emissions" in the list of information that must be disclosed if necessary to an understanding of the material impact or reasonably likely material impact of a target or goal. However, if a registrant has set a material target or goal to reduce emissions, it will be required to disclose this when explaining the scope of activities included in the target. The Final Rules do not include the proposed requirement to disclose any interim targets set by the registrant.

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[14] The SEC declined to adopt several prescriptive elements from the proposed Item 1503 (for example, disclosures describing how the registrant determines the relative significance of climate-related risks compared to other risks and how the registrant considers shifts in customer preferences in assessing potential transition risks). The Final Rules also include a materiality qualifier that the proposed rules had not.

Similar to Items 1502(d)(2) and 1502(e)(2), the Final Rules provide a phase-in for compliance with the Item 1504(c)(2) disclosure requirement. A registrant will not be required to comply with the requirements of Item 1504(c)(2) until the fiscal year immediately following the fiscal year of its initial compliance date for the subpart 1500 rules based on its filer status (see "Compliance Date Phase-In Periods" below).

Carbon offsets or RECs (1504(d))

The Final Rules include a disclosure requirement about a registrant's use of carbon offsets or RECs. However, unlike the proposed rules, the Final Rules require a registrant to disclose certain information about the carbon offsets or RECs only if they have been used as a material component of the registrant's plan to achieve climate-related 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, then the registrant must disclose the amount of carbon reduction, carbon avoidance and carbon removal represented by the offsets or the amount of generated renewable energy represented by the RECs; the source and nature of the carbon offsets or RECs; a description and location of the underlying projects; any registries or other authentication of the offsets or RECs; and the cost of the offsets or RECs.

GHG emissions (Item 1505)

The SEC's proposed rules for disclosure of GHG emissions were a major source of consternation for many commenters. In response to their concerns about the disclosure burden compared to the value of the proposed disclosures for investors, the SEC made significant changes to the GHG emissions disclosure requirement. Instead of requiring, as proposed, the disclosure of Scopes 1 and 2 emissions by all registrants regardless of their materiality, the Final Rules exempt smaller reporting companies ("SRCs") and emerging growth companies ("EGCs") from the disclosure of Scope 1 emissions and/or Scope 2 emissions metrics. LAFs and AFs that are not SRCs or EGCs are required to disclose Scope 1 and Scope 2 emissions on a phased-in basis, if such emissions are material.

The GHG emissions disclosure rules are based on a concept of scopes as developed by the Greenhouse Gas Protocol,[15] as follows:

- Scope 1 emissions, consisting of a registrant's direct GHG emissions.
- Scope 2 emissions, consisting of a registrant's indirect GHG emissions under the control of a registrant, such as electricity, heating, cooling, or steam obtained from other sources.
- Scope 3 emissions, consisting of all other indirect GHG emissions of a registrant (both upstream (from the value chain) and downstream (from a product's use or disposal)) that are not contained in a registrant's Scope 2 emissions.

In a change from the proposed rules, the Final Rules require the disclosure of any described scope of emissions to be expressed in the aggregate in terms of CO_2e.[16] Additionally, if a registrant is required to disclose its Scope 1 and/or Scope 2 emissions, and any constituent gas of the disclosed emissions is individually material, it must also

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15 *See* http://www.ghgprotocol.org.

16 The proposed rules would have required the disclosure of a registrant's GHG emissions both disaggregated by each constituent GHG and in the aggregate.

disclose such constituent gas disaggregated from the other gases. Unlike the proposed rules, the Final Rules do not require disclosure of GHG emissions in terms of intensity.

Importantly, the SEC declined to adopt a provision that would require a registrant to disclose its Scope 3 emissions, due to the potential burdens such a requirement could impose on registrants and other parties as well as questions about the current reliability and robustness of the data associated with Scope 3 emissions.[17] The SEC notes that Scope 3 calculation methodologies may continue to evolve over time, mitigating many of the concerns noted by commenters about the disclosure of Scope 3 emissions.

Under the Final Rules, if a registrant is required to disclose its Scope 1 and/or Scope 2 emissions, it must disclose those emissions 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 included in the filing. By contrast, a registrant that has not previously disclosed its Scopes 1 and/or 2 emissions in a SEC filing for a particular historical fiscal year is not required to estimate and report those emissions for such period.

In recognition that a registrant may have difficulty measuring and reporting its GHG emissions as of fiscal year-end by the same deadline for its Exchange Act annual report, the Final Rules provide that any GHG emissions metrics required to be disclosed pursuant to Item 1505 in a Form 10-K may be incorporated by reference from the registrant's Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions metrics disclosure relates. Registrants also have the option of including these disclosures in an amended annual report on Form 10-K no later than the due date for such Form 10-Q.[18]

Attestation of Scope 1 and Scope 2 Emissions Disclosure

New Item 1506 of Regulation S-K requires any registrant (including a foreign private issuer) required to provide Scope 1 and/or Scope 2 emissions described above and that is a LAF or AF to include an attestation report covering such disclosure in the relevant filing. Both AFs and LAFs are required to obtain limited assurance[19] beginning the third fiscal year after the compliance date for Item 1505. However, as modified from the proposed rules, only LAFs are required to obtain an attestation report at a reasonable assurance level; this requirement begins in the seventh fiscal year after the compliance date for Item 1505. The Final Rules do not require an AF to obtain an attestation report at a reasonable assurance level. Since SRCs and EGCs are no longer required to disclose GHG emissions under the Final Rules, they are exempt from the requirement to obtain an attestation report. Similarly, since

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17 It should be noted that some companies may have to report Scope 3 emissions to meet disclosure obligations unrelated to the SEC, whether pursuant to laws passed by the European Union or the State of California—the latter of which is subject to a pending litigation challenge in the United States District Court for the Central District of California. *See* "Impact of Other Laws" below.

18 To provide comparable treatment for foreign private issuers, the final rules provide that the GHG emissions metrics required to be disclosed pursuant to Item 1505 may be disclosed in an amendment to their annual report on Form 20-F, due no later than 225 days after the end of the fiscal year to which the GHG emissions metrics disclosure relates. This corresponds approximately to the second quarter Form 10-Q filing deadline and should provide foreign private issuers with an appropriate and similar amount of time as domestic registrants to provide the required GHG emissions metrics disclosure.

19 The proposed rules and the Final Rules leave the terms "limited assurance" and "reasonable assurance" undefined, relying instead on their marketplace understanding. In the proposing and adopting releases, the SEC notes that "limited assurance" is equivalent to the level of assurance (commonly referred to as a "review") provided over a registrant's interim financial statements included in a Form 10-Q, while "reasonable assurance" is equivalent to the level of assurance provided in an audit of a registrant's consolidated financial statements included in a Form 10-K.

registrants are no longer required to disclose Scope 3 emissions under the Final Rules, no registrants will be required to obtain assurance over Scope 3 emissions.

The Final Rules provide AFs and LAFs with additional time before they are required to comply with the GHG emissions assurance requirements, beyond the phased-in GHG emissions compliance dates. The following table illustrates the attestation requirements under the Final Rules, which must, at a minimum, be at the following assurance level for the indicated fiscal year for the required GHG emissions disclosure:

Filer Type	GHG Scopes 1 and 2 Disclosure Compliance Date	Limited Assurance	Reasonable Assurance
Large Accelerated Filers	Fiscal year 2026 (filed in 2027)	Fiscal year 2029 (filed in 2030)	Fiscal year 2033 (filed in 2034)
Accelerated Filers (other than Small Reporting Companies and Emerging Growth Companies)	Fiscal year 2028 (filed in 2029)	Fiscal year 2031 (filed in 2032)	N/A

Safe Harbor for Certain Climate-Related Disclosures

Item 1507 expressly acknowledges that certain disclosures (other than historic facts) required pursuant to subpart 1500 constitute "forward-looking statements" for purposes of the PSLRA safe harbor:

- Item 1502(e) (transition plans).
- Item 1502(f) (scenario analysis).
- Item 1502(g) (internal carbon pricing).
- Item 1504 (targets and goals).

Financial Statement Effects

The new Article 14 of Regulation S-X requires registrants making disclosures under subpart 1500 of Regulation S-K in an annual report or any registration statement that requires audited financial statements to disclose in a note to its financial statements certain disaggregated climate-related financial statement metrics. These metrics are mainly derived from existing financial statement line items. In the Final Rules, the amendments to Regulation S-X have been narrowed to focus on severe weather events and other natural conditions and carbon offsets and RECs, which the SEC maintains will be less burdensome for registrants. Furthermore, the Final Rules do not require any disclosure of the impacts to the statement of cash flows, and the SEC declined to adopt the proposed financial impact metrics requirements.

In particular, the Final Rules require disclosure falling under the following two categories of information: expenditure effects and financial estimates and assumptions.

Expenditure effects

The Final Rules focus on requiring the disclosure of capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions. Under the Final Rules, a registrant must disclose:

- The aggregate amount of (i) expenditures expensed as incurred and (ii) losses, excluding recoveries, incurred during the fiscal year as a result of severe weather events and other natural conditions, if such amount equals or exceeds one percent of the absolute value of income or loss before income tax expense or benefit for the relevant fiscal year.

- The aggregate amount of capitalized costs and charges, excluding recoveries, recognized during the fiscal year as a result of severe weather events and other natural conditions if such amount equals or exceeds one percent of the absolute value of stockholders' equity or deficit, at the end of the relevant fiscal year.

The SEC notes in the adopting release for the Final Rules that the denominators to be used in calculating the disclosure thresholds—i.e., income or loss before income tax expense or benefit, and stockholders' equity or deficit—are changed from the proposed rules. The SEC agreed with commenters that these figures are preferable since they are well known and understood by registrants and investors and are easily calculable based on line items in the financial statements that are defined under U.S. GAAP.[20]

The Final Rules (Rule 14-02(g)) require a registrant to attribute a cost, expenditure, charge, loss, or recovery to a severe weather event or other natural condition when the event or condition is a significant contributing factor in incurring the cost, expenditure, charge, loss, or recovery.

The SEC also adopted a de minimis threshold for these expenditure disclosures. Notwithstanding that disclosure may otherwise have been required based on satisfying the above ratios, the disclosures are not required if either:

- The aggregate amount of expenditures expensed and losses as incurred in the income statement is less than $100,000 for the relevant fiscal year; or

- With respect to the balance sheet, if the aggregate amount of capitalized costs and charges is less than $500,000 for the relevant fiscal year.

Although the Final Rules do not require registrants to disclose expenditures expensed and capitalized costs incurred to reduce GHG emissions or otherwise mitigate exposure to transition risks, registrants must still disclose capitalized costs, expenditures expensed, and losses related to the purchase and use of carbon offsets and RECs in the financial statements. In particular, if carbon offsets or RECs have been used as a material component of a registrant's plan to achieve its disclosed climate-related targets or goals, the Final Rules require the registrant to disclose (1) the aggregate amount of carbon offsets and RECs expensed, (2) the aggregate amount of capitalized carbon offsets and RECs recognized, and (3) the aggregate amount of losses incurred on the capitalized carbon offsets and RECs, during the fiscal year.

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[20] The SEC also notes in the adopting release that tying the required disclosure to costs incurred "as a result of" severe weather events produces a less burdensome requirement than the proposed requirement to require disclosure of costs incurred to "mitigate the risks from severe weather events and other natural conditions."

The proposed rules included expenditure-metrics requirements that would have required registrants to disclose separately the aggregate amount of expenditure expensed and the aggregate amount of capitalized costs. As modified, the capitalized costs, expenditures expensed, charges, and losses must be segregated between the balance sheet and the income statement depending on which financial statement they are recorded within upon recognition in accordance with applicable GAAP. For each of the balance sheet and income statement disclosures, if the applicable disclosure threshold is met, a registrant is required to disclose the aggregate amount of expenditures expensed and losses and the aggregate amount of capitalized costs and charges incurred during the fiscal year and separately identify where on the income statement and balance sheet these amounts are presented.

Financial estimates and assumptions

A registrant is required to disclose whether the estimates and assumptions used to prepare 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, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, or any climate-related targets or transition plans disclosed by the registrant. If so, the registrant must provide a qualitative description of how those events impacted the development of the estimates and assumptions used by the registrant in the preparation of its financial statements.

Unlike the proposed rules, the Final Rules require a registrant to provide disclosure for historical fiscal year(s) included in a registrant’s consolidated financial statements on a prospective basis only. Disclosure 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 year(s), for which audited consolidated financial statements are included in the filing.

Additionally, the SEC decided to include in the Final Rules two other types of contextual information that a registrant must disclose, including significant judgments made and other information that is important to an investor’s understanding of the financial statement effect.

The SEC confirms in the adopting release that the financial statement disclosure requirements of the Final Rules must be included in the scope of the audit when a registrant files financial statements in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”). Registrants that file financial statements prepared using IFRS as issued by the IASB are subject to the existing requirement to comply with Regulation S-X. The SEC added that the Final Rules do not alter the basis of presentation of financial statements referred to in an auditor’s report.

Compliance Date Phase-In Periods

The Final Rules will become effective 60 days following publication of the adopting release in the Federal Register, though compliance will be phased in for all registrants based on filer status. In a change from the proposed rules, the Final Rules provide an extended and phased-in compliance period for each type of registrant and for certain types of disclosures. SRCs, EGCs, and non-accelerated filers (“NAFs”) will receive the longest phase-in period. The following table illustrates the various compliance dates:

Compliance Dates under the Final Rules						
Filer Status	**Disclosure and Financial Statements Effects Audit**		**GHG Emissions/Assurance**			**Electronic Tagging**
	All Reg. S-K and S-X disclosures other than the three delineated Items	*Items 1502(d)(2),[21] 1502(e)(2),[22] and 1504(c)(2)[23]*	*GHG Scopes 1 and 2 emissions*	*Limited Assurance*	*Reasonable Assurance*	*Inline XBRL tagging for subpart 1500*
LAFs	Fiscal year beginning in calendar year ("FYB") 2025	FYB 2026	FYB 2026	FYB 2029	FYB 2033	FYB 2026
AFs (other than SRCs and EGCs)	FYB 2026	FYB 2027	FYB 2028	FYB 2031	N/A	FYB 2026
SRCs, EGCs, and NAFs	FYB 2027	FYB 2028	N/A	N/A	N/A	FYB 2027

Treatment of Disclosures for Purposes of the Securities Act and the Exchange Act

Unchanged from the proposed rules, the Final Rules require the climate-related disclosures to be filed rather than furnished. Climate-related disclosures will therefore be subject to potential liability pursuant to Section 18 of the Exchange Act and, if included or otherwise incorporated by reference into a Securities Act registration statement, Section 11 of the Securities Act as well.

Expected Costs of Compliance

The SEC in the adopting release provides estimates of the costs of compliance with the new disclosure regime, based on a recognition that the disclosures will carry both direct and indirect costs. The direct costs of compliance include (1) any costs related to developing or maintaining systems for collecting information to comply with the Final Rules, (2) costs of preparing and presenting the resulting disclosures for SEC filings, (3) costs associated with assuring the accuracy of the disclosures, such as audit and attestation costs, and (4) any legal or disclosure review costs incurred to support management's assertion that the disclosures comply with the Final Rules. Examples of

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[21] Item 1502(d)(2) requires a registrant to describe quantitatively and qualitatively the material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from activities to mitigate or adapt to climate-related risks.

[22] Item 1502(e) requires quantitative and qualitative disclosure about material expenditures incurred and material impacts on financial estimates and assumptions that directly result from actions taken under a transition plan (e.g., material expenditures made for climate-related research and development).

[23] Item 1504(c)(2) requires similar disclosure regarding material impacts that directly result from actions taken by a registrant to achieve a disclosed target or goal.

potential indirect costs include the risk of disclosure of proprietary business information, increased litigation risk, and the cost of hiring climate experts to help a registrant make the required disclosures. Bearing these sources of expenses in mind, the SEC estimates the following costs of compliance with the Final Rules:

- With respect to the Regulation S-K amendments pertaining to: governance disclosure; disclosure regarding the impacts of climate-related risks on strategy, business model, and outlook; and risk management disclosure, the SEC estimates that compliance costs will be $327,000 in the first year of compliance and $183,000 annually in subsequent years.

- Registrants have the option of conducting a scenario analysis describing the resilience of their business strategy in light of potential future changes in climate-related risks; those that do so must provide attendant disclosures. The SEC estimates the reporting costs for scenario analysis and attendant disclosures will be $12,000 in the first year and $6,000 in subsequent years.

- For registrants required to disclose GHG Scopes 1 and/or 2 emissions after a specified phase-in period (see table above), the SEC estimates compliance costs for these disclosures of $151,000 in the first year of compliance and $67,000 annually in subsequent years.

- Limited assurance for emissions disclosures (required after an additional phase-in period; see table above) is estimated to cost $50,000, while reasonable assurance is estimated to cost $150,000. For registrants that voluntarily establish targets or goals and are required to provide attendant disclosures, the SEC estimates the reporting costs will be $10,000 in the first year of establishing the target and $5,000 in subsequent years.

- With respect to amendments to Regulation S-X, the SEC estimates an upper bound of $500,000 in the first year of compliance, with an upper bound of $375,000 in subsequent years.

- Incremental audit fees are estimated to have an upper bound of $23,000 for all years.

The Final Rules Going Forward

The SEC in its adopting release stresses that climate-related risks have a material impact on capital markets and the financial results of individual businesses and thus warrant the comprehensive disclosure requirements that it has adopted. Nevertheless, on the day of the Final Rules' release, the Attorneys General for ten Republican-led states filed a petition in the U.S. Court of the Appeals for the Eleventh Circuit challenging the validity of the Final Rules. Other petitions have subsequently been filed by private actors and other state Attorneys General, including by nine other Republican-led states in the U.S. Court of Appeals for the Eighth Circuit, three other Republican-led states in the U.S. Court of Appeals for the Sixth Circuit, and three other Republican-led states in the U.S. Court of Appeals for the Fifth Circuit. The petitions argue that "the final rule exceeds the agency's statutory authority and otherwise is arbitrary, capricious, an abuse of discretion, and not in accordance with law."

By contrast, the environmental advocacy groups the Sierra Club and the Natural Resources Defense Council filed petitions in the U.S. Court of Appeals for the District of Columbia and in the U.S. Court of Appeals for the Second Circuit, respectively. These groups maintain that the Final Rules do not require enough disclosure by public companies on climate-related risks and their plans to mitigate those risks.

On March 15, 2024, a three-judge panel of the U.S. Court of the Appeals for the Fifth Circuit granted petitioners Liberty Energy Inc. and Nomad Proppant Services LLC their motion for an administrative stay of the Final Rules

pending the court's consideration of the request for a permanent stay that would last for the duration of the litigation.[24] Of course, if a stay remains in effect through the November 2024 election, such a stay could prove fateful for the Final Rules if the election results in a change in the administration.

Impact of Other Laws

The SEC in the adopting release also acknowledges other jurisdictions adopting climate-disclosure rules. In 2022, the European Union ("EU") adopted the Corporate Sustainability Reporting Directive ("CSRD"), which requires certain large and listed companies and other entities, including non-EU entities, to report on sustainability-related issues in line with the European Sustainability Reporting Standards.[25] And more recently, the State of California passed two climate disclosure bills into law. The Climate Corporate Data Accountability Act and the Climate-Related Financial Risk Act require significant climate-related disclosures—in some cases beyond the disclosures mandated by the SEC's Final Rules (such as GHG Scope 3 emissions)—by large entities doing business in California, regardless of their jurisdiction of incorporation, location of headquarters, status as a public or private corporation, or how much of their revenue is generated in California.[26]

The SEC takes the view that the Final Rules and the new California laws operate in parallel; at their open meeting on March 6, 2024, discussing the Final Rules, the SEC explained its position that there is no explicit preemption by the Final Rules of the California laws and any implied preemption is a matter for the courts. In the adopting release, the SEC surmises that the California laws may reduce the compliance burden of the Final Rules to the extent that they impose similar requirements for registrants that are subject to them. However, the disclosure required by these laws will appear in documents outside of SEC filings and therefore will not be subject to the same liability, disclosure controls and procedures, and other investor protections as the climate-related disclosures required under the Final Rules. For this reason, in addition to the plain fact that many SEC reporting companies have no obligations under the California law, the SEC determined that the California laws were not reason enough to dispense with its own rules addressing climate-related disclosure.

Implications for Asset Managers

The Final Rules have direct and indirect implications for asset managers. Notably, as discussed above in "New Regulatory Framework," the disclosure rules would apply to (i) any registrant that has a reporting obligation pursuant to Section 13(a) or 15(d) of the Exchange Act and (ii) companies that file a registration statement on certain Securities Act or Exchange Act registration statement forms and Exchange Act periodic reports. While the Final Rules do not apply to registered investment companies or asset-backed securities issuers, the SEC made clear that the Final Rules do apply to BDCs, exchange-traded products, REITs, and issuers of registered non-variable insurance contracts despite the recommendations of several commenters. It is expected that the disclosure burden will generally be less onerous for these entities than for operating companies, given the fact that many of the disclosure requirements are targeted at operating companies and the Final Rules' addition of a "materiality qualifier" to many of

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[24] *Liberty Energy, Inc., et al. v. S.E.C.*, No. 24-60109, 2024 WL 1152283 (5th Cir. Mar. 15, 2024). Of note, the Fifth Circuit court in December 2023 granted petitioners' request to vacate the SEC's share repurchase disclosure rules; *see Dechert OnPoint*, "Fifth Circuit Court of Appeals Vacates SEC's Adoption of Share Repurchase Disclosure Rules," available here.

[25] *See* Dechert's "CSRD Factsheet: What do I need to know," available here.

[26] *See Dechert OnPoint*, "California Governor Signs Climate Disclosure Bills with Significant Impact for Entities of All Forms Doing Business in the State," available here. Litigation challenging the California climate disclosure laws is currently pending in a California federal court. *See Dechert OnPoint*, "Business Coalition Sues California to Block New Climate Disclosure Laws," available here.

the disclosure requirements. The SEC acknowledged that these entities "will have only limited disclosure obligations to the extent climate-related risks are not material in a given case." The SEC also acknowledged that, if adopted, the proposed rules regarding ESG disclosures for certain investment advisers and investment companies (the "ESG disclosure rules") may impose overlapping disclosure requirements on BDCs.

The SEC's release of the Final Rules is a possible signal that the ESG disclosure rules, originally proposed on May 25, 2022, may be adopted soon.[27] The elimination of the Scope 3 emissions reporting requirements from the Final Rules suggests that Scope 3 emissions may also be removed from the ESG disclosure rules, if adopted. The inclusion of Scope 3 emissions in the ESG disclosure rules drew considerable pushback by commenters.

For most asset managers, the primary impact of the Final Rules will be the availability of additional climate-related information about the companies in which they invest. They will need to determine the extent to which this information is relevant to their investment process. The availability of information required by the Final Rules could lead to greater standardization in asset managers' consideration of climate-related risks and opportunities.

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27 For discussion of the ESG disclosure rules proposal, *see Dechert OnPoint*, "SEC Issues Rule Proposal Related to Certain Investment Advisers' and Funds' Disclosures About ESG Investment Practices," available here.

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