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SEC Finalizes Landmark Climate-Related Disclosure Rules

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On March 6, 2024, the Securities and Exchange Commission (the "SEC") voted to adopt its Climate-Related Disclosure Rule[1] (the "Final Rule"), by a vote of 3-2. Finalized almost two years after the initial proposed rule[2] (the "Proposed Rule") garnered over 24,000 comment letters from issuers, shareholders, interest groups and others—significantly more than any other past piece of SEC rulemaking—the Final Rule marks the first federal sustainability disclosure requirement in the U.S. and requires registrants to provide information on Scope 1 and Scope 2 greenhouse gas emissions ("GHG emissions"), severe weather-related financial statement disclosures and climate-related governance, risks and targets disclosures.

Notably, the Final Rule includes several significant deviations from the Proposed Rule, including:

- The requirement to provide GHG emissions data will only apply to registrants that are accelerated filers ("AFs") or large accelerated filers ("LAFs");
- No registrant will be required to provide Scope 3 GHG emissions data, and Scope 1 and 2 GHG emissions data is only required by AFs and LAFs, and only if material;
- Assurance requirements with respect to GHG emissions data is subject to an extended phase-in period, and reasonable assurance will eventually be required only for LAFs;
- No registrant will be required to provide GHG intensity data;
- Registrants will not be required to disclose the financial impacts of severe weather events and transition activities for each line item in their consolidated financial statements; that said, registrants will be required to provide financial statement disclosure of severe weather-related

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[1] *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors as well as Enhancement and Standardization of Climate-Related Disclosures Fact Sheet.

[2] *See* The Proposed Enhancement and Standardization of Climate-Related Disclosures for Investors as well as Proposed Rule Enhancement and Standardization of Climate-Related Disclosures Fact Sheet. For a brief overview of the Proposed Rule, see our client memo "SEC Proposed Long-Awaited Climate-Related Disclosure Rules," available here.

expenditures and capitalized costs and charges if such items exceed or equal 1% of the absolute value of income or loss in the relevant fiscal year;

- Disclosure of board and management oversight and governance of climate-related risks required by the Final Rule is streamlined, and registrants will not need to disclose specific board members tasked with climate-related oversight or the climate expertise of their board members;
- The safe harbor for forward-looking statements under the Private Securities Litigation Reform Act ("PSLRA") is explicitly extended to cover disclosure of targets and goals, transition plans, scenario analysis and internal carbon pricing; and
- Most disclosure requirements in the Final Rule are subject to a materiality threshold.

On the whole, the Final Rule represents a win for detractors of the Proposed Rule given its significantly scaled-back requirements. The extent to which it ultimately improves transparency and accountability with respect to long-term business issues relating to climate change, and enables investors and lenders to better analyze and price climate-related risks, will depend to a large degree on the volume and value of the disclosure it drives.

Below, we discuss the requirements of the Final Rule, offer a comparison to other climate disclosure requirements in force, summarize potential (and already-filed) legal arguments challenging the Final Rule's enforceability and provide next steps for consideration.

Applicable Filings

The disclosure requirements in the Final Rule pertain to both Securities Act registration statements, including those for IPOs, and Exchange Act periodic reports. These rules mandate the inclusion of climate-related disclosures in registration statement Forms 10, S-1, F-1, S-3, F-3, S-4, F-4 and S-11, and periodic filings under Forms 10-K[3] and 20-F. The disclosure would be treated as "filed" with the SEC rather than "furnished" and would be subject to potential liability under Section 18 of the Exchange Act or Section 11 of the Securities Act, as applicable.

[3] A registrant that is required to disclose its Scope 1 and Scope 2 emissions may elect to provide this disclosure in its second quarter Form 10-Q in the fiscal year immediately following the fiscal year to which the relevant emissions relate.

Form	Rule	Requirements
Securities Act S-1, F-1, S-3, F-3, S-4, F-4, and S-11; Exchange Act 10; 10-K and 20-F	Article 14 – Disclosure of Severe Weather Events and Other Information of Regulation S-X	Registrants must disclose information relating to severe weather events and other natural conditions, including: • The aggregate amount of expenditures expensed, if the amount equals or exceeds 1% of the absolute value of income or loss in a relevant fiscal year, unless the value is less than $100,000 • The aggregate amount of capitalized costs and charges, if the amount equals or exceeds 1% of the absolute value of stockholders' equity or deficit at the end of the relevant fiscal year, unless the value is less than $500,000 • Financial estimates and assumptions materially impacted Registrants must also disclose: • The aggregate amount of carbon offsets and renewable energy credits ("RECs") expensed, if material to the registrant's plans to achieve disclosed climate-related goals • Financial estimates and assumptions materially impacted by disclosed targets or transition plans
	Items 1500-1506 of Regulation S-K	Registrants must disclose information relating to: • Governance (board oversight and management's role in assessing and managing climate-related risk) • Climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant • Processes for identifying, assessing and managing material climate-related risks • Material expenditures incurred and material impacts on financial estimates from activities to mitigate/adapt to climate-related risks • Plans to mitigate transition risks, including how such plans impact the registrant's business and related material expenditures • Information relating to use of scenario analyses and internal carbon prices, as applicable • For large accelerated and accelerated filers, GHG emissions metrics (Scope 1 and 2), if material, excluding impact of purchased or generated offsets, methodology for calculating the metrics and attestation • Material climate-related targets and goals (including GHG emissions reductions targets)

GHG Emissions Metrics

The Final Rule requires Scope 1 (*i.e.*, direct emissions from company-owned or -controlled sources) and/or Scope 2 (*i.e.*, indirect emissions from the generation of purchased energy, such as electricity) GHG emissions disclosures, if material, by LAFs and AFs that are not smaller reporting companies ("SRCs") or emerging growth companies ("EGCs"). The disclosure is required on a phased-in basis as presented in the table on page 5 below and notably excludes Scope 3 emissions and GHG emissions intensity figures entirely. The requirement to disclose material Scope 3 emissions (*i.e.,* all indirect emissions that occur both upstream and downstream in the value chain of the reporting company) was one of the most controversial aspects of the Proposed Rule due to the anticipated calculation costs and challenges associated with the current reliability and robustness of data associated with those calculations.

In determining whether Scope 1 and 2 emissions are material, the SEC noted in its adopting release for the Final Rule (the "Adopting Release") that traditional notions of materiality (as defined by the SEC and grounded in longstanding Supreme Court precedent) are intended to apply—a sentiment reiterated throughout the release. The Adopting Release goes on to provide two examples: (i) where the registrant is subject to transition risk by virtue of its GHG emissions that is likely to materially impact its business in the short- or long-term and (ii) where the registrant has targets, goals or a transition plan that otherwise requires disclosure under the rules.

Under the Final Rule, material Scope 1 and 2 emissions must be reported for the registrant's most recently completed fiscal year, and for the historical fiscal year(s) included in the consolidated financial statements included in the filing, if previously reported.[4]

Additionally, for all reported emissions, registrants must comply with the following:

- **Disclose Scope 1 and Scope 2 emissions separately**, expressed in the aggregate in terms of CO2e. If any constituent gas of the disclosed emissions is individually material (*e.g.*, methane), disaggregate and disclose that constituent gas.
- **Disclose Scope 1 and/or Scope 2 emissions in gross terms,** excluding the impact of any purchased or generated offsets.
- **Describe organizational and operational boundaries** used when calculating Scope 1 and/or Scope 2 emissions, including the method used to determine such boundaries, whether the organizational boundaries materially differ from the scope of entities and operations included in the registrant's consolidated financial statements, and the method used to determine boundaries in that scenario.

Registrants must also disclose additional information on the protocol or standard used to report Scope 1 and 2 emissions, including methodology, significant inputs and significant assumptions. Notably, the Final Rule allows a registrant to use reasonable estimates in disclosing GHG emissions as long as it also provides the assumptions underlying, and its reasons for using, such estimates.

Though the Scope 1 and/or Scope 2 emissions disclosure is required to be included in the registrant's Form 10-K (or 20-F) filing, the Final Rule provides that it may be incorporated by reference from the registrant's Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions disclosure relates. For in-scope foreign private issuers ("FPIs"), the Scope 1 and/or Scope 2 disclosures may be disclosed in an amendment to their annual report on Form 20-F within 225 days after the end of the fiscal year to which the GHG emissions disclosure relates. This extended timeline, which was not included in the Proposed Rule, is meant to accommodate reported difficulties in measuring and reporting GHG emissions as of fiscal year-end by the registrant's 10-K filing deadline.

Assurance Over GHG Disclosure

Both LAFs and AFs will be required to obtain limited assurance over their GHG emissions disclosures starting in the third fiscal year the registrant is subject to the GHG emissions disclosure requirement. By a LAF's

[4] Requirement will not apply to a registrant that has not previously disclosed its Scopes 1 and 2 emissions in a filing with the SEC for a particular historical fiscal year. Inclusion in a sustainability report alone would not trigger the requirement.

seventh fiscal year, it will need to obtain reasonable assurance over these disclosures, but at no time under the Final Rules will that requirement apply to AFs.

Like the Proposed Rule, the Final Rule sets minimum requirements and standards that the attestation report and service provider would need to meet. Any service provider that prepares and signs a GHG attestation report must (i) be an expert in GHG emissions (*i.e.*, have significant experience in measuring, analyzing and reporting GHG emissions) and (ii) be independent from the registrant and any of its affiliates (*i.e.*, be able to provide objective and impartial judgment). Like the Proposed Rule, the Final Rule does not require the attestation provider to be a registered public accounting firm.

Phased-in compliance dates for both the GHG emissions disclosure and attestation requirements are as follows:

Filer Type	Scopes 1 and 2 Disclosure	Limited Assurance	Reasonable Assurance
Large Accelerated Filer	Fiscal Year 2026 (filed in 2027)	Fiscal Year 2029 (filed in 2030)	Fiscal Year 2033 (filed in 2034)
Accelerated Filer	Fiscal Year 2028 (filed in 2029)	Fiscal Year 2031 (filed in 2032)	N/A

Strategy and Risk Disclosure

The Final Rule, in part modeled on the Task Force on Climate-Related Financial Disclosures ("TCFD") framework and Greenhouse Gas Protocol ("GHG Protocol"), requires detailed disclosure of climate-related risks that have materially impacted or are reasonably likely to have a material impact on registrants' strategy, results of operations or financial condition. While the Proposed Rule put the burden on registrants to define relevant short-, medium- and long-term time horizons for these risks, the Final Rule simply requires registrants to disclose whether the identified climate-related risks are likely to manifest in the short term, meaning the next 12 months, or in the long term, covering any time after 12 months. Among other requirements, the Final Rule requires registrants to disclose:

- Whether the risk is a physical or transition risk.
  - For **physical risks**, whether it is an acute or chronic risk, the nature and the geographic location (though no requirement to disclose zip codes, as provided in the Proposed Rule) of properties, processes or operations subject to such risks.
  - For **transition risks**, whether it relates to regulatory, technological, market or other transition-related factors, and the impact of those factors on the registrant; the Final Rule notes that having operations in a jurisdiction that has made a commitment to reduce GHG emissions could expose a registrant to a transition risk.
- The actual and potential material impacts on the registrant's **business strategy**, **financial planning and capital allocation** of any climate-related risks identified above. The Final Rule states that this could include material impacts on the registrant's business operations, products or services, suppliers, activities to adapt to climate-related risks and research and development expenses, though the Adopting Release emphasizes that this is a non-exclusive list.
- Information about the **material expenditures** incurred and material impacts on financial estimates and assumptions that directly result from (i) activities in which the registrant participates to mitigate or adapt to climate-related risks and (ii) transition plans disclosed.

In addition, the Final Rule requires disclosure regarding the use of (1) transition plans, (2) scenario analysis and (3) internal carbon pricing, each to the extent applicable to the registrant. For registrants that have adopted a transition plan, the Final Rule will require a description of the plan and subsequent updates about the plan each year. Registrants that use scenario analysis, and determine that a climate-related risk is reasonably likely to have a material impact on its business, must disclose a description of the related parameters, assumptions, analytical choices made and the projected material impacts. Finally, registrants that use an internal carbon price that is material to how they evaluate climate risk must disclose specified information including the price in units per metric ton of carbon dioxide equivalent, total carbon price and rationale for internal carbon price.

Financial Statement Metrics

The financial statement metrics contemplated to be disclosed under the Proposed Rule were another key area where the SEC received substantial comments. In particular, the Proposed Rule would have required registrants to provide:

i. *Financial impact metrics*: quantitative disclosure as to the impacts of severe weather events and other natural conditions and any transition activities on a line item basis in the registrant's financial statements (where the impact on the line item exceeded a bright-line 1% threshold of the total line item for the relevant fiscal year);

ii. *Expenditure metrics*: quantitative disclosure of expenditures expensed and capitalized costs incurred to mitigate severe weather events and other natural conditions or transition activities (where the aggregate amount of expenditures expensed or capitalized costs exceeded 1% of total expenditure expensed or total capitalized costs for the relevant fiscal year);

iii. *Financial estimates and assumptions*: qualitative disclosure on whether estimates and assumptions used to produce consolidated financial statements were impacted by risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions or any climate-related risks or a potential transition to a lower carbon economy or any climate-related targets disclosed by the registrant; and

iv. Certain contextual information.

The Final Rule eliminates the proposed financial impact metrics described above and requires registrants to provide:

i. *Capitalized costs, expenditures expensed, charges and losses*: quantitative disclosure of the aggregate amount of capitalized costs, expenditures expensed, charges and losses incurred, excluding recoveries, during the fiscal year as a result of severe weather events and other natural conditions (subject to applicable 1% and *de minimis* thresholds, disclosed in a note to the financial statements);[5]

ii. *Carbon offsets and RECs*: quantitative disclosure of the capitalized costs, expenditures expensed and losses incurred associated with carbon offsets and RECs, if they have been used as a material

[5] For purposes of this and the next disclosure, the attribution principle is applied (*i.e.*, a capitalized cost, expenditure expensed, charge, loss or recovery results form 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).

component of the registrant's plan to achieve climate-related targets or goals, disclosed in a note to the financial statements;[6]

iii. *Financial estimates and assumptions*: where financial estimates and assumptions a registrant uses to produce financial statements are materially impacted by risks and uncertainties associated with severe weather events and other natural conditions or disclosed climate-related targets or transition plans, qualitative disclosure on how the development of estimates/assumptions was impacted, disclosed in a note to the financial statements; and

iv. Certain contextual information, including 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 expensed, charges or losses have been disclosed.

The Adopting Release states that FPIs that file consolidated financial statements reconciled to U.S. GAAP would be required to use U.S. GAAP as the basis for calculating and disclosing these financial metrics, while FPIs that use International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board, would apply IFRS.

Governance and Oversight

The Final Rule requires registrants to describe board oversight of, and management's role in respect of, climate-related risk in less granular detail than the Proposed Rule would have required. With respect to the board oversight of these risks, the Final Rule requires registrants to disclose:

- Any board committee or subcommittee responsible for climate-related risk, if applicable;
- The processes by which the board or relevant committee or subcommittee is informed about climate-related risks, if applicable; and
- Whether and how the board oversees progress against a disclosed transition plan, climate-related target or goal, if any.

The SEC noted in the Adopting Release that the Final Rule is not intended to shift governance behaviors and that disclosure in this section is not required for registrants that do not have responsive information. Given the requirement that a registrant "describe the board of directors' oversight of climate-related risks," arguably a registrant whose board does not oversee those risks would need to state as such.

One of the more prescriptive elements omitted from the Final Rule was the requirement for registrants to disclose whether any board member has expertise in climate-related risks. Commenters cautioned against the individual "expert" labeling requirement, stating concerns that such disclosure requirements could distort the focus of the board by overemphasizing climate-related expertise at the expense of other business considerations. The SEC made a similar change in its recent finalization of the Cybersecurity Risk Management, Strategy, Governance and Incident Disclosure Rule,[7] which required disclosure about cybersecurity board expertise when offered in proposed form.

With respect to management's role in assessing and managing climate-related risks, the Final Rule will require disclosure of:

[6] Registrants required to produce these disclosures must also disclose their accounting policy for carbon offsets and RECs and the beginning and ending balances of capitalized carbon offsets and RECs on the balance sheet for the fiscal year.

[7] For more information, see our client memo "SEC Adopts Final Rules For Public Companies Relating to Cyber Incident Disclosure and Cybersecurity Risk Management, Strategy and Governance Matters," available here.

- Whether and which management positions or committees are responsible for assessing and managing climate-related risks, and the relevant expertise of those persons;
- The processes for assessing and managing such risk; and
- Whether those positions or committees report to the board or a committee of the board.

Other Disclosures

Targets and Goals

Registrants must disclose any climate-related targets or goals (*e.g.*, GHG emissions reduction goals, water usage, waste production) they have set, 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. This disclosure must provide any information necessary to understand the impact (or likely impact) of the goal, including a description of the scope of activities and emissions, unit of measurement, defined time horizon of meeting targets, relevant baselines and a description of how the registrant intends to meet its stated goals.

Registrants must disclose any progress made on meeting stated targets or goals and must update the disclosure annually to include relevant actions taken. As with transition plans and actions related to mitigating climate-related risks, registrants are required to include quantitative and qualitative disclosures of any material expenditures and impacts on financial estimates and assumptions that are a direct result of a climate-related target or goal, or actions taken to meet those goals.

Risk Management

Under the Final Rule, registrants are required to disclose any processes they have for identifying, assessing and managing material climate-related risks and how such processes are integrated into the registrant's overall risk management system. The Final Rule strips away most of the prescriptive requirements under Proposed Rule, but still requires a description of how the registrant:

- Identifies whether it has incurred or is reasonably likely to incur a material climate-related risk (physical or transition), and
- Decides how to prioritize climate-related risks and whether to mitigate, accept or adapt to such risks

Use of Carbon Offsets and Renewable Energy Certificates

In addition to the disclosures required under the Financial Statement Metrics section (above), registrants that use carbon offsets or RECs as material component of their emissions reduction strategy are required to disclose the amount of carbon reduction represented by such offsets/RECs, the nature and source of the offsets/RECs, a description and location of the underlying projects and any registries or other authentication methods.

Safe Harbor

The Final Rule includes an important new section extending a safe harbor from private liability within the U.S. jurisdiction for certain forward-looking statements related to climate-related disclosures. Under this new section, the SEC has exercised its statutory authority under the PSLRA to provide that the safe harbor for forward-looking statements will apply to disclosures relating to transition plans, scenario analysis, use of internal carbon price and climate-related targets and goals. Consistent with the PSLRA, however, statements of historical fact are not covered.

Notably, the Final Rule does not allow registrants to rely on the safe harbor provision when complying with other climate disclosure requirements or frameworks (e.g., ISSB), to the extent that information reported pursuant to other requirements or frameworks exceeds the disclosure required by the Final Rule.

Disclosure Obligation Timeline

The below chart reflects the disclosure obligation timeline for in-scope entities, reported as of fiscal year beginnings.

	Disclosure and Financial Statement Compliance Dates		GHG Emissions/Assurance Compliance Dates		
Registrant Type	**All Reg. S-K and S-X disclosures, other than as noted**	**Specified disclosures relating to material expenditures[8]**	**Scopes 1 and 2 GHG Emissions Disclosure**	**Limited Assurance**	**Reasonable Assurance**
Large accelerated filers	FYB 2025	FYB 2026	FYB 2026	FYB 2029	FYB 2033
Accelerated filers	FYB 2026	FYB 2027	FYB 2028	FYB 2031	N/A
Non-accelerated filers, smaller reporting companies, emerging growth companies	FYB 2027	FYB 2028	N/A	N/A	N/A

Legal Challenges

With the heightened level of public scrutiny and interest around this rule, evidenced by the record-breaking number of comment letters the SEC received in response to the Proposed Rule, legal challenge was a certainty, notwithstanding the SEC's protracted consultation with stakeholders prior to rule finalization and the significant changes made to its requirements. Indeed, within just a few hours of its adoption, ten states filed a legal challenge in the U.S. Court of Appeals for the Eleventh Circuit, asking the court to vacate the Final Rule on the basis that it exceeds the SEC's statutory authority and is arbitrary, capricious, an abuse of discretion and unlawful.[9] Eight other legal challenges followed, resulting in nine challenges to the Final Rule in six appellate jurisdictions. The majority of the challenges (including the challenge in the Eleventh Circuit) allege that the SEC exceeded its statutory authority; two challenges filed by environmental groups allege that the rule does not sufficiently protect investors, and that the SEC arbitrarily removed key provisions of the Proposed Rule in the Final Rule (including the Scope 3 emissions reporting requirement).[10]

On March 19, the SEC requested that all legal challenges filed be consolidated in one circuit under the U.S. Multicircuit Petition Statute (28 U.S.C. § 2112), which governs the review of federal agency actions that give rise to petitions for judicial review in multiple federal courts of appeal. On March 21, the Judicial Panel on

[8] Items 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2) require quantitative and qualitative disclosure of material expenditures and material impacts on financial estimates and assumptions relating to (i) activities to mitigate or adapt to climate-related risks, (ii) transition plans and (iii) climate-related targets and goals.

[9] *See* Petition for Review filed in the 11th Circuit.

[10] *See e.g.*, Sierra Club, Earthjustice Lawsuit Challenges SEC's Weakened Climate Risk Disclosure Rule and Natural Resources Defense Council Petition for Review.

Multidistrict Litigation conducted a lottery that determined that the Missouri-based Eighth Circuit (which provides appellate review of cases tried in federal courts in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota) will hear the case. On April 4, the SEC voluntarily issued a stay[11] on the rule, explaining that a stay would avoid "potential regulatory uncertainty" that could arise if disclosure requirements kick in before legal challenges are resolved.

The key arguments relating to whether the Final Rule is lawful will likely focus on the following questions:

- Whether the SEC has **authority to adopt the rule**. The SEC argues in its Adopting Release that Congress has granted statutory authority to the SEC to request information that is likely to materially impact a registrant's business, results of operations or financial condition, whether they are climate-related or not. But this argument may not hold if the Supreme Court of the United States were to dismantle the 40-year-old *Chevron*[12] doctrine, which sets forth a two-part legal test for determining when courts should defer to a federal agency's interpretation of a statute, in a pair of appeals that the Court heard oral argument on in January, *Bright v. Raimondo* and *Relentless v. Department of Commerce*.
- Whether the rule is **arbitrary and capricious**, similar to the Fifth Circuit's December holding vacating recently adopted SEC rules regarding stock repurchases. The court held that the SEC had acted arbitrarily and capriciously in violation of the Administrative Procedure Act when it failed to (i) adequately respond to comments, and (ii) conduct a proper cost-benefit analysis in its adoption of the share repurchase rule.[13]
- Whether the SEC **arbitrarily removed** key provisions in the Final Rule, based on the need for investors to have complete information about a company's climate-related financial risks.
- Application and interpretation of the "**major questions doctrine**," which the Supreme Court relied on in its 2022 opinion in *West Virginia v. Env't Prot. Agency*, limiting the U.S. Environmental Protection Agency's authority to regulate GHG emissions. In his prepared remarks on March 6, SEC Commissioner Mark Uyeda raised the argument that a "colorable textual basis" may not sufficiently support the SEC's assertion of regulatory authority for the Final Rule based on Supreme Court precedent.[14]

Other future challenges could allege a violation of the First Amendment as compelled speech, similar to arguments plaintiffs have made against California's climate disclosure rules.[15]

Next Steps for Issuers to Consider

- The Final Rule becomes effective 60 days after its publication in the Federal Register. Legal uncertainty as a result of challenges filed on the implementation of the rule, and the timeline for implementation, including whether the Eighth Circuit will issue a stay pending review, present challenges for companies

[11] *See* SEC Order Issuing Stay.

[12] Under the *Chevron* doctrine, a reviewing court must defer to an agency's interpretation of a congressional statute, if such statute is ambiguous and does not demonstrate clear congressional intent. *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 468 U.S. 837 (1984).

[13] *See* 5th Circuit Share Repurchase Rule Opinion.

[14] A Climate Regulation under the Commission's Seal: Dissenting Statement on The Enhancement and Standardization of Climate-Related Disclosures for Investors.

[15] *See Chamber of Commerce of the United States of America et al. v. California Air Resources Board et al*. Additionally, in litigation relating to the SEC's U.S. Conflict Minerals Rule, the District Court for the District of Columbia distinguished securities laws mandating disclosure against determination labels, setting aside as unlawful compelled speech the portion of the rule requiring regulated entities to report to the SEC and to state on their websites that any of their products "have not been found to be 'DRC conflict free.'" *See National Association of Manufacturers v. SEC*.

in scope, given that challenges may take years to conclude (though noting that at a minimum, certain aspects of the Final Rule are expected to survive challenge). Separately, questions have been raised as to what a future SEC would enforce. From a practical perspective, issuers should ensure they understand the requirements of the Final Rule and prepare to comply accordingly. SEC rules are typically not stayed during pending litigation, unless the SEC voluntarily postpones the effective date of the rule, or a federal court and/or the SEC grants a request to stay. Accordingly, issuers should continue to ensure their disclosure committees are appropriately informed and build out their disclosure controls and procedures to ensure they're sufficiently robust to identify, accumulate and disclose the information required under the Final Rule. Issuers are encouraged to engage with counsel and other third party-experts and technology solution providers as necessary to implement a plan for compliance.

- Although Chair Gensler noted in his remarks the challenge of compliance with differing climate disclosure laws, he also affirmed the SEC's view of the importance of having U.S. standards to which U.S. issuers can point. Therefore companies subject to these various regimes (*e.g.*, CSRD and California climate disclosure laws) will need to track and strategically reconcile differing compliance dates and requirements (*i.e.,* materiality standards; whether Scope 3 disclosure is required; differing types of qualitative risk disclosure) and begin to prepare accordingly.
- In light of the climate-related governance disclosures required under the Final Rule and recent SEC enforcement actions[16] related to ESG governance, companies should ensure finance and sustainability functions are aligned and appropriately equipped, and thoroughly review and update, if necessary, climate-related processes, procedures and frameworks and accounting policies to ensure good governance practices with respect to oversight of climate risks. Even if the Final Rule is successfully challenged, there is a strong likelihood that some form of governance disclosures may still stand as there is increasing federal attention, and investor demand, related to addressing climate-related risks.[17] Further, aside from U.S. laws, registrants may be subject to global regulations that require disclosures that align with the TCFD Framework, calling for a thorough assessment of existing company climate-related governance.

Comparison to Global Climate Disclosure Regimes

While the Final Rule is the SEC's first disclosure obligation applicable to U.S. registrants, many of these companies will be subject to similar reporting frameworks under California's climate reporting laws, passed in October 2023,[18] and/or the EU's Corporate Sustainability Disclosure Regime ("CSRD"), which will require reporting for certain entities beginning in 2025. The chart below offers a high-level comparison of the key similarities and differences between these laws.

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[16] For more information on ESG-related enforcement actions, see our client memo "Tracking the SEC's Climate and ESG Task Force," available here.

[17] Federal activity focusing on climate-related risks such as greenwashing and more, include: (i) the interagency guidance, Principles for Climate-Related Financial Risk Management for Large Financial Institutions, jointly issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (ii) the forthcoming update to the Green Guides by the Federal Trade Commission and (iii) Proposed Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts, issued by the Commodity Futures Trading Commission.

[18] We note the future of the California climate-related laws (*e.g.* SB 253 and SB 261) remains uncertain due to the recent lawsuit against the California Air Resources Board and lack of funding. For more information on these laws and California's Voluntary Carbon Market Disclosures Law (*e.g.* AB 1305), see our client memo "Far-Reaching California Climate Disclosure Bills Signed into Law" and "California's Flurry of ESG Lawmaking," available here and here.

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Topics	California SB 253, SB 261 and AB 1305	SEC Climate-Related Disclosures	CSRD
Covered Companies	SB 253 and SB 261: Public or private entities doing business in California, with revenue above $1 billion and $500 million, respectively AB 1305: Public or private entities that participate in the voluntary carbon market and or make claims regarding carbon neutrality	U.S. registrants	EU "large undertakings,"[19] small and medium sized EU banks and insurance companies, small and medium sized EU-listed companies, as well as non-EU companies with significant EU nexus
Reporting Implementation Timeline	SB 253: 2026: Report Scope 1 and 2 covering FY2025 2027: Report Scope 3 covering FY2026, due 180 days after Scope 1 and 2 reporting SB 261: On or before 1/1/2026: Prepare and file first TCFD report AB 1305: Effective January 1, 2024, but the bill's author noted his intent for disclosure requirements to begin [January 1, 2025](#)	2026: LAFs include all disclosures excluding GHG emissions and specified disclosure relating to material expenditures [20] covering FY2025 2027: AFs include all disclosures excluding GHG emissions and specified disclosure relating to material expenditures covering FY2026 LAFs report Scope 1 and Scope 2 and specified disclosure relating to material expenditures covering FY 2026 2028: Non-accelerated filers, SRCs and EGCs include all disclosures excluding specified disclosure relating to material expenditures covering FY 2027 (excluded from GHG emissions reporting) AFs report on specified disclosure relating to material expenditures covering FY 2027 2029: AFs report Scope 1 and Scope 2 covering FY2028 Non-accelerated filers, SRCs and EGCs report on specified disclosure relating to material expenditures covering FY 2028	2025: Reporting covering FY 2024 for EU undertakings subject to NFRD, namely EU large public interest entities and large EU-listed companies 2026: Reporting covering FY2025 for EU "large undertakings" and EU parent undertakings of a large group 2027: Reporting covering FY2026 for EU SME public interest entities; EU and non-EU SMEs listed in EU regulated markets 2029: Reporting covering FY2028 for non-EU companies with significant EU nexus
GHG Emissions Disclosure	Scope 1, 2 and 3 GHG emissions for all covered companies (subject to phase-in)	Scope 1 and 2 GHG emissions, if material, for LAFs and AFs (no phase-in period)	Scope 1, 2 and 3 GHG emissions for all covered companies (subject to phase-in)[21]

[19] Large undertakings exceed at least two of the following (for at least two consecutive financial years): (i) balance sheet of at least €25m, (ii) net turnover of at least €50m, and/or (iii) average of 250 employees during the financial year.

[20] These disclosures include quantitative and qualitative descriptions of the material expenditures incurred and material impacts on financial estimates and assumptions directly resulting from (i) activities related to mitigating or adapting to climate-related risk, (ii) transition plans (if any) and (iii) progress toward meeting a climate-related target or goal.

[21] Specified undertakings or groups not exceeding 750 employees may omit Scope 3 emissions disclosures in the first year of sustainability statement preparation.

Carbon Offsets Disclosure (for entities that purchase carbon offsets)	Details regarding the offset including the seller, project type, identification number, protocol used to estimate impact, and any independent third-party verification of data or claims	If carbon offsets or renewable energy credits used as a material component of plan to achieve targets or goals, amount of carbon reduction represented by offsets, source, description and location of underlying projects, registries or other authentication of offsets/RECs and cost of offsets/RECs	If carbon credits are used and a net-zero target is disclosed, information must include the scope, methodologies and frameworks applied; an undertaking that has made public claims of GHG neutrality that involve use of carbon credits must explain the credibility and integrity of carbon credits used
Climate-Related Risk Disclosure	TCFD Report	Generally based on TCFD requirements, but rules set out additional factors, details and considerations to be incorporated	Generally aligns with ISSB (from a financial materiality perspective) and GRI for the purpose of international interoperability, but requires broader disclosures, applying the principle of double materiality
Reporting Standard	Prepare reports in accordance with the GHG Protocol and TCFD	Incorporates standards of the GHG Protocol and TCFD, but differs in key areas, including the scope of entities within a registrant's consolidated group for which reporting is required	Generally aligns with ISSB and GRI for the purpose of international interoperability, but includes a double materiality standard
Assurance Requirement	Limited assurance over Scope 1 and 2 until 2030 when reasonable assurance is required; limited assurance over Scope 3 starting by 2030	For LAFs and AFs only, limited assurance over Scope 1 and 2 for the 3rd filing years following implementation; for LAFs only, reasonable assurance required beginning in the 7th year	Limited assurance over Scope 1, 2 and 3; reasonable assurance from 2028
Location of Disclosure	SB 253 and SB 261: Submitted for inclusion in publicly-available database AB 1305: Company website	Included in registration statements and 10-K filings	Included in annual management reports

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