Governance & Securities
Alert

From the Public Company Advisory Group and Sustainability & Environmental, Social and Governance Practice of Weil, Gotshal & Manges LLP

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SEC Adopts Less Prescriptive Climate-Related Disclosure Rules but Challenges Remain

On March 6, 2024, the Securities and Exchange Commission (the "SEC") adopted final climate-related disclosure rules in a 3 to 2 vote split along party lines. As discussed in Appendix A, the rules already face multiple legal challenges from states, businesses, and environmental groups, as well as dissent from two SEC Commissioners who question its necessity, authority, and cost. The SEC Chair and the two other Commissioners who voted in favor, as well as the SEC Staff presenting the rules for adoption, noted repeatedly that the final rule takes into account the thousands of comments, available here, that indicated the initial proposal was too onerous. The final rule, they noted, contains numerous revisions to make the rules less prescriptive, including eliminating the requirement to disclose Scope 3 greenhouse gas ("GHG") emissions, and eliminating the financial impact metrics, which would have required disclosure of climate-related impacts on each line item of a company's consolidated financial statements. The SEC's 886-page adopting release, and fact sheet on the final rules, are available here and here.

In this Alert, we distill the adopting release into its key aspects, with more detailed discussion included in Appendices, and, importantly, we include our advice on what to do now.

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Key Aspects of the New Climate-Related Disclosure Rules

The new rules, primarily housed in new Subpart 1500 of Regulation S-K and Article 14 of Regulation S-X, require companies to provide climate-related disclosures in their annual reports and registration statements, including:

- **GHG Emissions Disclosure:** If material, Scope 1 and Scope 2 GHG emissions for large accelerated filers and certain accelerated filers (see Appendix B);
- **Attestation Requirements:** Attestation over Scope 1 and Scope 2 GHG emissions disclosure for large accelerated filers and accelerated filers that are required to provide these disclosures (see Appendix C);
- **Disclosure of Climate-Related Risks:**
  - Climate-related risks that have had or are reasonably likely to have a material impact on a company, including on its strategy, results of operations or financial condition over the short and long term, actual and potential material impacts of such climate-related risks on strategy, business model and outlook, and how material impacts are considered as part of strategy, financial planning and capital allocation (see Appendix D and Appendix E);
  - If, as part of its strategy, a company has undertaken activities to mitigate or adapt to material climate-related risks, a quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions (see Appendix E);
  - Any transition plan adopted to manage a material transition risk, actions taken during the year under the plan, including how such actions have impacted a company's business, results of operations and financial condition, along with quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the transition plan (see Appendix E);
  - Information about any scenario analysis used where a company has determined that a climate-related risk is reasonably likely to have a material impact on the company's business, results of operations, or financial condition (see Appendix E);
  - If a company's use of an internal carbon price is material to how it manages a material climate-related risk, certain disclosure about the internal carbon price (see Appendix E);
  - Any oversight and governance of climate-related risks by a company's board of directors and management, and relevant expertise of management responsible for assessing and managing climate-related risks (see Appendix F);
  - Any processes a company has for identifying, assessing, and managing material climate-related risks, and whether and how any such processes are integrated into the company's overall risk management system or processes (see Appendix G);
- **Disclosure of Targets and Goals:**
  - If a company has set a climate-related target or goal that has materially affected or is reasonably likely to materially affect the company's business, results of operations, or financial condition, certain disclosures about such target and goal, including any progress made toward meeting the target or goal and how progress has been achieved (see Appendix H);
  - If carbon offsets or renewable energy credits ("RECs") have been used as a material component of a company's plan to achieve climate-related targets and goals, certain disclosures about such carbon offsets or RECs as well as information about related expenses and capitalization in the notes to financial statements (see Appendix H);

- **Financial Statement Disclosure Requirements:**
  - Financial statement effects that are focused on severe weather events and other natural conditions in a footnote to a company's audited financial statements (see Appendix I);
  - Estimates and assumptions that materially affect disclosed goals or targets or transition plans impacted by severe weather events and other natural conditions (see Appendix I); and
  - Certain disaggregated costs, expenditures, charges, and losses that represent quantitative information derived from transactions and amounts recorded in a company's books and records underlying the company's financial statements (see Appendix I).
- **XBRL:** Electronic tagging of climate-related disclosures in Inline XBRL.

Key Changes from Proposing Release

- Eliminated Scope 3 GHG emissions disclosures for any company;
- Limited Scope 1 and Scope 2 GHG emissions disclosure requirements to only when material and only for large accelerated filers and certain accelerated filers (and exempting smaller reporting companies ("SRCs") and emerging growth companies ("EGCs")), rather than for all companies and regardless of materiality;
- Eliminated the requirement for disclosure of financial impact metrics and transition activities on any relevant line item in a company's consolidated financial statements;
- Narrowed the categories of financial estimates and transition activity disclosure;
- Added longer phase-in periods for attestation and only required reasonable assurance for large accelerated filers;
- No requirement to assess whether events were caused by climate or were climate-related;
- Qualified certain disclosure requirements by materiality, including, for example, impacts of climate-related risks, use of scenario analysis, and maintaining internal carbon price;
- Eliminated the requirement to describe the board of directors' climate-related expertise;
- Eliminated any requirement of material changes to climate-related disclosure in 10-Q or 6-K; and
- Extended certain phase-in periods.

Determination of Materiality

The rules do not include any guidance on how companies should evaluate materiality in the context of climate-related risks. As a result, when evaluating whether any climate-related risks have materially impacted or are reasonably likely to have a material impact on the company, companies should rely on traditional definitions of materiality. As defined by the SEC and consistent with Supreme Court precedent, a matter is material "if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote or such a reasonable investor would view omission of the disclosure as having significantly altered the total mix of information made available." The materiality determination requires quantitative and qualitative considerations and is fact-specific.

The "reasonably likely" component of the rules will be grounded in whether disclosure of the climate-related risk would be material to investors. This requires that management evaluate the consequences of the risk as it would any known trend, demand, commitment, event or uncertainty, in applying the Management's Discussion and Analysis ("MD&A") standard. Management should make an objective evaluation, based on materiality, including when the fruition of future events is unknown. Materiality is covered in more detail in each of the relevant Appendices.

Compliance Dates

The following table summarizes the compliance timeline for the final rules, as they relate to both annual reports and registration statements. For registration statements, compliance will be required beginning in any registration statement that is required to include financial information for the full fiscal year indicated in the table. For example, a large accelerated filer with a January 1 fiscal-year start and a December 31 fiscal year-end date will not be required to comply with the climate disclosure rules (other than those pertaining to GHG emissions and those related to Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2), if applicable) until its Form 10-K for fiscal year ended December 31, 2025, due in March 2026.

Large Accelerated Filers			
Fiscal Year Beginning in **Calendar Year 2025**	Fiscal Year Beginning in **Calendar Year 2026**	Fiscal Year Beginning in **Calendar Year 2029**	Fiscal Year Beginning in **Calendar Year 2033**
• Majority of Regulation S-K and S-X disclosures (other than as noted in this table)	• Item 1502(d)(2)* • Item 1502(e)(2)** • Item 1504(c)(2)*** • Scope 1 and 2 GHG emission information • Inline XBRL data tagging for subpart 1500	• Item 1506 limited assurance attestation	• Item 1506 reasonable assurance attestation
Accelerated Filers			
Fiscal Year Beginning in **Calendar Year 2026**	Fiscal Year Beginning in **Calendar Year 2027**	Fiscal Year Beginning in **Calendar 2028**	Fiscal Year Beginning in **Calendar Year 2031**
• Majority of Regulation S-K and Regulation S-X disclosure (other than as noted in this table) • Inline XBRL data tagging for subpart 1500	• Regulation S-K Item 1502(d)(2)* • Regulation S-K Item 1502(e)(2)** • Regulation S-K Item 1504(c)(2)***	• Scope 1 and 2 GHG emission information	• Item 1506 limited assurance attestation (reasonable assurance attestation N/A)

Smaller Reporting Companies, Emerging Growth Companies and Non-Accelerated Filers	
Fiscal Year Beginning in **Calendar Year 2027**	Fiscal Year Beginning in **Calendar Year 2028**
• Majority of Regulation S-K and Regulation S-X Disclosure (other than as noted in this table; Scope 1 and 2 GHG emission information and Item 1506 assurance attestation N/A) • Inline XBRL data tagging for subpart 1500	• Regulation S-K Item 1502(d)(2)* • Regulation S-K Item 1502(e)(2)** • Regulation S-K Item 1504(c)(2)***

* Quantitative and qualitative disclosure of 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 that have materially impacted or are reasonably likely to have a material impact on the company, including adoption of new technologies or processes.

** Quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of a transition plan adopted to manage a material transition risk.

*** Quantitative and qualitative disclosure of any material expenditures and material impacts on financial estimates and assumptions as a direct result of any climate-related target or goal that has materially affected or is reasonably likely to materially affect the company's business, results of operations, or financial condition, or the actions taken to make progress toward meeting the target or goal.

Application of New Rules

U.S. Public Companies		Foreign Private Issuers		Other Issuers	
Form 10-K	✓	Form 20-F	✓	SRCs (other than GHG disclosures)	✓
Form 10-Q*		Form 6-K*		EGCs (other than GHG disclosures)	✓
Form S-1	✓	Form F-1		Asset-based securities issuers	✓
Form S-3**	✓	Form F-3**	✓	BDCs	✓
Form S-4***	✓	Form F-4***	✓	REITs	✓
Form S-8		MJDS Filers		Issuers of registered non-variable insurance contracts	✓
Form 11-K					

* The only time a company will disclose climate-related information responsive to the final rules in a Form 10-Q is when it elects to disclose its Scopes 1 and/or 2 emissions pursuant to Item 1505 of Regulation S-K. A foreign private issuer ("FPI") that is subject to the GHG emissions reporting requirement, however, is required to provide the GHG emissions disclosure in its annual report on Form 20-F, although it may provide such emissions disclosure on a delayed basis in an amendment to that filing. The proposed rule would have required such delayed disclosure on a Form 6-K, but that requirement has been eliminated.

** Forms S-3 and F-3 are not being amended to reference Subpart 1500 because the required climate-related disclosures would be included in a company's Form 10-K or 20-F annual report that is incorporated by reference into those Securities Act of 1933 ("Securities Act") registration statements.

*** In a change from the proposed rules, the final rules will 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.

Foreign Private Issuers Subject to Same Rules as U.S. Domestic Registrants - Again

Like several other recent rulemakings including around cybersecurity, the final rules apply the same disclosure requirements to FPIs as to U.S. domestic registrants. As highlighted in Commissioner Uyeda's dissenting statement, the SEC could have eased the reporting burdens of FPIs and made the U.S. capital markets more attractive to them by allowing these companies to report climate-related information pursuant to their home country climate-related disclosure requirements. We discuss this theme of reducing the regulatory gap between FPIs and domestic issuers in our alert here.

What to do Now?

The final climate rules significantly expand disclosure requirements, and the vast majority of companies will need to use the time before effectiveness of the rules and phase-in of the compliance dates to prepare.

- **Review the rules and make a plan.** Review and assess the new rules and determine what will be required of you. Consider your filer status and any changes thereto that may become effective in the next few years that could impact disclosure required under the new rules (e.g., phase-out of EGC status). Create a detailed action plan and integrate it with any existing plans for compliance with other climate reporting requirements that are already underway (e.g., the European Union's Corporate Sustainability Reporting Directive ("CSRD"), California Senate Bills 253 and 261, discussed below).
- **Conduct or refresh your climate-related risk assessment, including materiality analysis.** Certain disclosure under the new rules will depend on whether and how climate-related risks have or are reasonably likely to materially impact your company's business strategy, results of operations or financial condition. Ensure the company has a climate-related risk assessment process in place and update any existing climate-related risk assessment processes to factor in the new rules. Consider carefully the company's position on materiality of Scope 1 and Scope 2 GHG emissions. Any determination that Scope 1 and Scope 2 emissions are not material or that any other disclosure is not required due to lack of materiality, if questioned, will be viewed in hindsight. Such determination should be documented with legal counsel and accounting firm involvement.
- **Assess the state of your current climate disclosure and conduct a gap analysis.** Take stock of what you are already saying publicly, whether in SEC filings, environmental, social and governance ("ESG") reports, on your website or elsewhere. Understand the data, processes and controls over this information, identifying any issues and making any changes sooner rather than later. Review risk factors and disclaimers. Based on the results of your materiality analysis and taking into consideration your current disclosure and practices, conduct a gap analysis against the rules applicable to your company to identify what data is being gathered and what data will need to be gathered, and implement processes to ensure disclosures will be assurance-ready.
- **Refine climate governance, risk management framework and controls.** Review and revise corporate governance guidelines, relevant board and management committee charters and organizational structures to address climate risk oversight and clearly define roles and responsibilities. Refine disclosure controls and procedures surrounding GHG emissions and other areas of mandated disclosure (including risks and impact of weather events and natural conditions) as well as internal controls over financial reporting which are also implicated by the new Regulation S-X requirements.
- **Analyze any climate-related targets and goals.** Identify any climate-related target or goal set by the company, determine the materiality of such target or goal, and know if any climate-related target or goal has been publicly disclosed. Understand how the company intends to meet the target or goal, and implement a process for tracking progress. Make a plan for withdrawing or modifying any target or goal that is no longer achievable.
- **Prepare your budget and educate your teams**. Consider resources (e.g., people, processes, technologies) needed for meeting reporting deadlines and plan ahead to work any enhancements into the relevant budget(s). Educate the board of directors, management, and employees about the final rule and build organizational capacity.
- **Coordinate with finance and your independent auditor**. Prepare for financial statement footnote disclosure of expenditures, losses and capitalized costs and charges, in each case resulting from severe weather events and other natural conditions, subject to 1% and de minimis thresholds. Discuss with your finance team and auditors well in advance.
- **Prepare for attestation (if applicable).** For accelerated and large accelerated filers, Scope 1 and 2 emissions will, after a phase in, require independent attestation, phased in from limited assurance to reasonable assurance over time for large accelerated filers. Consider whether you have a preferred service provider, taking into

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account independence requirements, or conduct a search and work on engagement. Note that it may be difficult for an expert that has assisted you with preparing GHG emissions data to meet the independence requirements if the provider would be in the position of attesting to its own work.

- **Stay tuned.** While we do not recommend deferring implementation of the above list of action items, the rules are already facing significant opposition, including legal and legislative challenges and increased activism, as discussed in Appendix A.

Appendix A – The New Rules Are Already Subject to Numerous Legal Challenges – With More Expected

Legal challenges have already been filed and more are expected. On March 6, the same day the rule was finalized, the Attorneys General from West Virginia, Georgia, Alabama, Alaska, New Hampshire, Indiana, Oklahoma, South Carolina, Wyoming and Virginia filed a petition for review in the U.S. Court of Appeals for the Eleventh Circuit. The states called the climate rule "a back door move to undermine the energy industry" that will impose overly burdensome compliance costs on corporations. That same day, Liberty Energy, a major energy industry service provider, and Nomad Proppant Services, a service based frac sand company, filed a challenge in the U.S. Court of Appeals for the Fifth Circuit. And two days later, Louisiana, Texas and Mississippi filed their own challenge to the rule in the U.S. Court of Appeals for the Eleventh Circuit. In bringing the challenge, Louisiana Attorney General Liz Murrill said, "Not only do these disclosure requirements fall outside of the Commission's authority and violate the First Amendment, but they also drive up business costs, which will then be passed on to the consumers." Yesterday, an additional challenge was filed by Iowa, Arkansas, Idaho, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and the American Free Enterprise Chamber of Commerce, in the U.S. Court of Appeals for the Eighth Circuit.

In addition to the challenges already filed, it is expected that the U.S. Chamber of Commerce may also commence a legal challenge. In fact, on March 6, the Chamber issued a very pointed statement:

> *While it appears that some of the most onerous provisions of the initial proposed rule have been removed, this remains a novel and complicated rule that will likely have significant impact on businesses and their investors. The Chamber will continue to use all the tools at our disposal, including litigation if necessary, to prevent government overreach and preserve a competitive capital market system.*

Not only will the new rule be challenged by business, trade associations and states who believe that its requirements are too onerous, arbitrary and capricious and beyond the authority of the SEC, there is also a significant likelihood that the Sierra Club and Sierra Club Foundation, represented by Earthjustice, or other environmentally friendly organizations will commence legal challenges that the climate rule did not go far enough. In particular, it is expected that those organizations will challenge the SEC's allegedly arbitrary removal of key provisions from the final rule, particularly the requirements to disclose Scope 3 emissions, while also taking action to defend the SEC's authority to implement such a rule.

The New Rule Creates Significant Enforcement and Litigation Exposure for Public Companies

Several of the requirements in the final rules could well drive increased enforcement activity but, at a minimum, increase regulatory and litigation exposure for public companies. To date, the Enforcement Division of the SEC has been relatively inactive in bringing climate related enforcement actions, notwithstanding the creation of an ESG Task Force in 2021, and public pronouncements by senior staff that the SEC have been reviewing all environmental statements – even those outside required filings – for material misstatements and omissions, and issuing comments querying the materiality of climate-related disclosures included outside of SEC filings. In fact, the SEC only has brought a small handful of climate related enforcement actions and almost all of the enforcement actions filed have been against investment advisers for marketing ESG funds in an allegedly misleading fashion.

The only real climate related enforcement action that the SEC has brought against a non-financial institution was *SEC v. Vale S.A.*, where the SEC alleged that the company misled local governments and investors about the safety of the Brumadinho dam through its ESG disclosures. And even in *Vale*, after initially filing it as an intentional securities fraud action in 2022, the SEC settled the case on negligence grounds less than a year later.

The final rules, combined with other exogenous factors, could well lead to increased SEC enforcement activity. As discussed below in more detail, several of the rule's requirements impose climate-related reporting obligations on public companies that are akin to financial reporting and internal controls requirements. In particular, the requirement that companies disclose "climate-related risks that have had or are reasonably likely to have a material

impact on the company's business strategy, results of operations, or financial condition" seems similar to the reporting obligations imposed on companies around controls over financial reporting. So perhaps it should come as no surprise that the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") has already released guidance aimed at helping organizations achieve effective internal control over sustainability reporting that "[l]everag[es] the significant knowledge gained in the application of Internal Control—Integrated Framework "ICIF" to financial reporting over the past two decades."

Historically, when sweeping new reporting obligations have been imposed on public companies, there has been a resulting spate of enforcement actions brought—typically two to three years after the rule becomes effective—against those companies who fail to implement the requirements consistent with the SEC's expectations. That seems equally likely here given that companies could well struggle in defining the contours of "material" climate-related risks, as well as determining which activities, if any, they need to be taking to mitigate or adapt to those risks.

There are also external forces that could drive – and perhaps even expedite – greenwashing enforcement activity by the SEC Staff. One example are the environmental based enforcement actions being brought by State Attorneys General. On February 28, the New York Attorney General sued a global beef producer for allegedly misleading the public with "sweeping representations to consumers about its commitment to reducing its GHG emissions and be 'Net Zero by 2040,'" when the New York Attorney General believes it has no viable plan to achieve that objective. This civil action – like other greenwashing actions brought by the Attorneys General of New York, California, Vermont, Massachusetts and the District of Columbia – could have just as easily been brought by the SEC as a securities fraud enforcement action. Given the increased attention of State Attorneys General to greenwashing claims, there is potential for political pressure on the SEC to become more active in this space as well.

Another force is the increased risk of civil greenwashing class action litigation. In the past several years, the Plaintiffs' bar has increasingly pursued consumer class action litigation against companies that represent their products or services as having some environmental benefit. Plaintiffs argue that these representations are false or deceptive under a variety of theories, such as violation of state consumer protection statutes, common law negligent misrepresentation or fraud, and even public nuisance. Key examples include *Swartz v. Coca-Cola*, regarding Coca-Cola's claims that its plastic bottles were "100% recyclable," and *Berrin v. Delta Airlines*, regarding Delta's representation of itself as the "world's first carbon-neutral airline." This proliferation of consumer class actions could in turn draw further scrutiny from the SEC and encourage stricter monitoring and oversight of companies making environmental claims.

Dissenting Statements from Commissioners Hester Peirce and Mark Uyeda

Commissioner Hester Peirce dissented from the final rule on mandatory climate risk disclosures, and argued in her statement that the final rules are unnecessary, costly, and intrusive. Commissioner Peirce contended that the existing principles-based, materiality-focused regime already requires companies to disclose relevant climate information to investors, and that the SEC has not justified the special treatment of climate issues over other non-economic factors. She criticized the rules for imposing prescriptive and granular disclosures that may overwhelm disclosures, distract boards and managers, and distort corporate behavior. She also questioned the reliability, comparability, and integration of climate data with financial data, noting that climate data collection and analysis is still imprecise. Finally, Commissioner Peirce acknowledged the Staff's efforts in producing the final rule, but noted that the rule should have been re-proposed to reflect the significant changes and developments since the proposal, including new rule elements.

Commissioner Mark Uyeda also criticized the final rule as a climate regulation that exceeds the SEC's statutory authority, misuses the disclosure regime for political and social goals, and imposes excessive burdens on public companies. He argued that the rule is a significant policy decision that requires clear congressional authorization, not a modest statutory basis. Commissioner Uyeda also faulted the SEC for not re-proposing the rule after making substantial changes from the proposal, and for not exempting SRCs, EGCs, and FPIs from the rule.

Appendix B – Greenhouse Gas (GHG) Emissions Disclosure

Investors increasingly consider a company's GHG emissions as a central measure and indicator of the company's exposure to, and management of, transition risk and also a useful metric of progress towards any stated climate-related targets or goals. As compared to the rule proposal, the SEC significantly scaled back the GHG emissions disclosure requirement in a manner intended to limit compliance costs, ground GHG emissions-related disclosures in a manner consistent with traditional concepts of materiality and phase in disclosure requirements over time. Notably, the final rule does not require companies to quantify and disclose GHG emissions from their supply chains or customers, known as Scope 3 emissions. This decision has resulted in significant criticism from some investors and environmental groups arguing that the final rule is insufficient to provide adequate information to investors on a company's climate risk. The final rule also requires disclosure of Scopes 1 and/or 2 emissions only by large accelerated filers and accelerated filers, and only if material. In addition, the final rule exempts SRCs and EGCs from any requirement to disclose their GHG emissions, continuing a trend towards reduced disclosure requirements for SRCs and EGCs. Notwithstanding the significant scaling down of the rule requirements as compared to the rule proposal, the rules have already been challenged as unconstitutional (see Appendix A). Climate-related disclosure requirements imposed by California in Senate Bills 253 and 261, including as to Scope 1, 2 and 3 GHG emissions and climate-related financial risk (as discussed in our alert here) are currently being challenged in federal court on First Amendment grounds by the U.S. Chamber of Commerce and various agricultural groups.

As to the decision to remove the requirement to disclose Scope 3 emissions, the adopting release notes that although the Task Force on Climate-related Financial Disclosures (the "TCFD") has reported a significant increase in the number of companies that have publicly disclosed their GHG emissions across the globe in recent years, a minority of North American and U.S. companies have done so. The TCFD recently reported that only 30% of North American companies surveyed reported their Scopes 1, 2, and 3 emissions in 2021.

Certain Companies Required to Disclose Scopes 1 and/or 2 Emissions, Only if Material. Instead of requiring, as proposed, the disclosure of Scopes 1 and 2 emissions by all public companies regardless of their materiality, the final Item 1505 of Regulation S-K will require the disclosure of Scopes 1 and/or 2 emissions by large accelerated filers and accelerated filers that are not SRCs or EGCs, on a phased in basis, *but only if such emissions are material.* GHGs are defined to mean carbon dioxide, methane, nitrous oxide, nitrogen trifluoride, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. The SEC defines Scope 1 emissions and Scope 2 emissions, respectively, as a company's direct GHG emissions from operations that are owned or controlled by the company, and indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat or cooling that is consumed by operations owned or controlled by the company. The rule defines GHG emissions as direct and indirect emissions of GHGs expressed in metric tons of carbon dioxide equivalent (CO_2e), of which direct emissions are GHG emissions from sources that are owned or controlled by the company, and indirect emissions are GHG emissions that result from the activities of the company but occur at sources not owned or controlled by the company.

The SEC directs companies to apply "traditional notions of materiality under the Federal securities laws" when evaluating whether their Scopes 1 and/or 2 emissions are material. As such, materiality should not be determined merely by the amount of these emissions but by assessing:

- whether a reasonable investor would consider the disclosure of the company's Scope 1 emissions and/or its Scope 2 emissions important when making an investment or voting decision; or
- whether such a reasonable investor would view omission of the disclosure as having significantly altered the total mix of information made available.

A company's Scopes 1 and/or 2 emissions could be considered material if its calculation and disclosure are necessary to allow investors to determine whether those emissions are significant enough to subject the company to a transition risk that will or is reasonably likely to materially impact its business, results of operations, or financial condition in the short- or long-term. The SEC notes that if a company faces a material transition risk arising out of a requirement to report its GHG emissions metrics under foreign or state law (for example, under California's Senate

Bill 253, European Sustainability Reporting Standards promulgated under the CSRD and/or International Sustainability Standards Board climate disclosure standards, as applicable) because such emissions are currently or are reasonably likely to be subject to additional regulatory burdens through increased taxes or financial penalties, the company should consider whether such emissions metrics are material under the SEC's new rules.

A company's GHG emissions may be material if its calculation and disclosure are necessary to enable investors to understand whether the company has made progress toward achieving a stated climate-related target or goal or an energy transition plan. In contrast, the SEC makes clear that the mere existence of a material transition risk does not result in a company's Scope 1 and Scope 2 emissions necessarily being de facto material to the company. For instance, a company could reasonably decide that it is exposed to a material transition risk for reasons independent of its GHG emissions, such as a new law or regulation that restricts the sale of its products based on the technology it uses. This material risk may not necessarily trigger disclosure of Scope 1 and Scope 2 emissions information under Item 1505, although it may trigger disclosure obligations under Item 1502(b).

The final rules also provide that a company is not required to include GHG emissions from a manure management system when disclosing its overall Scopes 1 and 2 emissions, for so long as implementation of such a disclosure requirement continues to be subject to restrictions on appropriated funds or otherwise prohibited by federal law.

Presentation of GHG Emissions Metrics and Disclosure of the Underlying Calculation Methodologies and Assumptions.

GHG Emissions Metrics

The final rule will require the disclosure of any described scope of emissions to be expressed in the aggregate in terms of CO_2e, a deviation from the proposed rule, which would have required the disclosure of a company's GHG emissions both disaggregated by each constituent GHG and in the aggregate. In addition, if a company is required to disclose its Scope 1 and/or Scope 2 emissions, and any constituent GHG of the disclosed emissions is individually material, the company also must disclose such constituent GHG disaggregated from the other gases (listed above). For example, if a company has included a particular constituent GHG, such as methane, in a GHG emissions reduction target that is disclosed pursuant to Item 1504(a) because it is reasonably likely to materially affect the company's business, such constituent gas may be material and, therefore, required to be disclosed in disaggregated fashion. Methane, in particular is the subject of heightened regulatory scrutiny due to its potency at trapping heat in the atmosphere and could subject certain companies to additional transition risks as governments or investors consider risks associated with individual GHG components differently. In these instances, more specific disclosure of a particular constituent GHG may be prudent. Finally, disclosed GHG emissions must be disclosed in gross terms, excluding the impact of any purchased or generated offsets. Companies are not required to disclose their GHG emissions in terms of intensity, i.e. measured in terms to the amount of carbon dioxide emitted per unit of economic output or activity, as the SEC agreed with some commenters who argued that investors should be able to calculate a company's GHG emissions per unit of total revenue by dividing a company's gross GHG emissions by its total revenues.

Organizational Boundaries

Companies also will be required under Item 1505 to describe "the methodology, significant inputs, and significant assumptions" used to calculate the company's disclosed GHG emissions. In making disclosures under the rule, the SEC expects companies to provide investors with important contextual information, such as the scope of the entities included in the disclosed GHG emissions. Consistent with the proposed rule, the final rule will require a company to disclose the organizational boundaries used when calculating its Scope 1 emissions and/or its Scope 2 emissions. Unlike the proposed rule, which would have required a company to use an identical scope of entities and other assets included in its consolidated financial statements when determining the organizational boundaries for its GHG emissions calculation, the final rule provides greater flexibility. The final rule requires the company to disclose the

method used to determine the organizational boundaries. If the organizational boundaries materially differ from the scope of entities and operations included in the company's consolidated financial statements, the company must provide a brief explanation of this difference in sufficient detail for a reasonable investor to understand as well as an explanation of the method used to determine those boundaries.

Operational Boundaries

Companies making GHG emissions disclosures under Item 1505 also must include a "brief discussion of, in sufficient detail for a reasonable investor to understand" the operational boundaries used, including the approach to categorization of emissions and emissions sources, the protocol or standard used to report the GHG emissions (including the calculation approach, the type and source of any emission factors used, and any calculation tools used to calculate the GHG emissions). As described in the final rule release, rather than requiring a lengthy explanation of the calculation approach used, the final rule requires a company to disclose whether it calculated its GHG emissions metrics using an approach pursuant to the GHG Protocol's Corporate Accounting and Reporting Standard, an Environmental Protection Agency ("EPA") regulation, an applicable International Organization for Standardization ("ISO") standard, or another standard. Pursuant to this provision, the SEC also expects a company to disclose whether it calculated its Scope 2 emissions using a particular method, such as the location-based method, market-based method, or both, and identify any calculation tools used, such as those provided by the GHG Protocol or the ISO standards. The final rule will not require the disclosure of the use of any quantitative emission factors. Rather, a company must disclose the type and source of any emission factors used, such as the EPA's emission factors for stationary combustion and/or mobile combustion of various fuel types.

Finally, the final rule permits companies to use reasonable estimates when calculating and disclosing its GHG emissions as long as it also describes the assumptions underlying, and its reasons for using, the estimates. The SEC explicitly recognizes that it is common practice under various GHG emissions reporting methodologies to use estimates, such as emission factors, when calculating a company's Scopes 1 and 2 emissions as direct measurement of GHG emissions at a source often is not feasible.

Timeline for Reporting GHG Emissions Metrics.

Initial Compliance Date and Filing Deadline

As described in the table in the Executive Summary, the final rule requires that large accelerated filers disclose Scope 1 and/or Scope 2 emissions beginning in 2027 for the fiscal year beginning in 2026. Accelerated filers (other than SRCs or EGCs) must begin making GHG disclosures beginning in 2029 for the fiscal year beginning in 2028. If a company 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 an SEC filing, for the historical fiscal year(s) included in the consolidated financial statements included in the filing. By contrast, a company that has not previously disclosed its Scopes 1 and 2 emissions in an SEC filing for a particular historical fiscal year will not be required to estimate and report those emissions for such period.

The SEC recognizes that companies may have difficulty measuring and reporting its GHG emissions as of fiscal year-end by the same deadline for its Exchange Act annual report as many commenters indicated that their companies currently report such metrics outside of SEC filings after completion of the second fiscal quarter. To address this concern, the final rules provide that any GHG emissions metrics required to be disclosed pursuant to Item 1505 in an annual report filed with the SEC on Form 10-K may be incorporated by reference from the company's Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions metrics disclosure relates, or included in an amended Form 10-K filed no later than the due date for the company's second quarter Form 10-Q. Companies must include an express statement in the Form 10-K indicating the intention to incorporate by reference or amend the filing for this information in order to provide notice to investors regarding where to find the required GHG emissions metrics disclosure.

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Foreign Private Issuers

To accommodate FPIs, 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, which shall be due no later than 225 days after the end of the fiscal year to which the GHG emissions metrics disclosure relates. According to the SEC, this corresponds approximately to the second quarter Form 10-Q filing deadline and should provide FPIs with an appropriate and similar amount of time as domestic companies to provide the required GHG emissions metrics disclosure. An FPI must include an express statement in its annual report indicating its intention to incorporate by reference or amend its filing for this information in order to provide notice to investors regarding where to find the required GHG emissions metrics disclosure.

Appendix C – Attestation of Scope 1 and Scope 2 GHG Emissions Disclosure

Under Item 1506(a), companies that are required to provide Scope 1 and/or Scope 2 emissions disclosure pursuant to Item 1505 will need to include an attestation report by an independent third party covering the disclosure of its Scope 1 and/or Scope 2 emissions in the relevant filing. The attestation engagement must, at a minimum, be at the following assurance level for the indicated fiscal year for the required GHG emissions disclosure:

Filer Type	Scopes 1 and 2 Emissions Disclosure Compliance Date	Limited Assurance Compliance Date	Reasonable Assurance Compliance Date
Large accelerated filers	Fiscal year beginning in 2026	Fiscal year beginning in 2029	Fiscal year beginning in 2033
Accelerated filers (other than SRCs and EGCs)	Fiscal year beginning in 2028	Fiscal year beginning in 2031	N/A

Only large accelerated filers are required to obtain an attestation report at a reasonable assurance level, and not until the relevant filings including the emissions disclosure covering the fiscal year beginning in 2033. SRCs and EGCs are exempt from the attestation report requirement, as they are not required to provide GHG emissions disclosure under Item 1505, and the requirement does not apply to private companies that are a party to a business combination transactions involving a securities offering registered on Form S-4 or F-4.

Required attestation reports must be provided pursuant to standards that are (i) publicly available at no cost or that are widely used for GHG emissions assurance; and (ii) established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment. The adopting release lists four standards that the SEC currently considers to meet the due process requirements: attestation standards issued by the Public Company Accounting Oversight Board ("PCAOB"), American Institute of Certified Public Accountants, International Auditing and Assurance Standards Board, and ISO standards related to the attestation of GHG emissions disclosures. The SEC acknowledges that while auditing standards for financial statement audits are more established after decades of development and required use than attestation standards and practices for GHG emissions, the practice of providing assurance over GHG emissions disclosure is far from nascent and is mandated by new disclosure requirements, for example, in California Senate Bill 253 and the standards promulgated under the CSRD.

During the phased in compliance period when only limited assurance is required for large accelerated filers, large accelerated filers are permitted, at their option, to obtain reasonable assurance of Scope 1 and/or 2 emissions disclosure. Similarly, an accelerated filer, at its option, may obtain reasonable assurance of its Scope 1 and/or 2 emissions disclosure. Note, however, that for filings made after the compliance date for assurance required by Item 1506(a), to avoid potential confusion, the additional, voluntary assurance obtained by such filer would be required to follow the requirements of Items 1506(b) through (d), including using the same attestation standard as the required assurance over Scope 1 and/or Scope 2 emissions.

The rules do not define "limited assurance" or "reasonable assurance," because the SEC believes these terms should be defined by assurance standard setters. As described in the release, the primary difference between the two levels of assurance relates to the nature, timing, and extent of procedures required to obtain sufficient, appropriate evidence to support the limited assurance conclusion or reasonable assurance opinion. For example, in a limited assurance engagement, the procedures performed by attestation providers are generally limited to analytical procedures and inquiries, but in a reasonable assurance engagement, they are also required to perform risk assessment and detail testing procedures to respond to the assessed risk.

In addition, a company that is not subject to Item 1505 but that voluntarily discloses GHG emissions information and voluntarily obtains assurance will be required to comply only with Item 1506(e), if applicable, further discussed below.

	After the Compliance Date for GHG Emissions Disclosure but before the Compliance Date for Assurance	After the Compliance Date for Assurance
Large accelerated filers and accelerated filers subject to Items 1505 and 1506(a) through (d) (e.g., companies that are required to disclose GHG emissions and obtain assurance)	Any voluntary assurance over any GHG emissions disclosure must comply with the disclosure requirements in Item 1506(e)	Any voluntary assurance obtained over GHG emissions disclosures that are not required to be assured pursuant to Item 1506(a) (e.g., voluntary Scope 3 disclosures) must follow the requirements of Item 1506(b) through (d), including using the same attestation standard as the company's required assurance over Scope 1 and/or Scope 2 disclosure
Companies not subject to Items 1505 or 1506(a) through (d) (e.g., companies that are not required to disclose GHG emissions)	Same as above	Any voluntary assurance over any GHG emissions disclosure must comply with the disclosure requirements in Item 1506(e)

In the first year that an accelerated filer or large accelerated filer is required to provide an attestation report, such report is only required to cover the Scope 1 and/or Scope 2 emissions for its most recently completed fiscal year. To the extent the accelerated filer or large accelerated filer disclosed Scope 1 and/or Scope 2 emissions for a historical period, it would not be required to obtain an assurance report covering such historical period in the first year of the attestation rule's applicability. However, for each subsequent fiscal year's annual report, the company will be required to provide an attestation report for an additional fiscal year until an attestation report is provided for the entire period covered by the company's GHG emissions disclosures.

GHG emissions attestation provider and report requirements. Required GHG emissions attestation reports must be prepared and signed by a GHG emissions attestation provider, which person or firm must (1) be an expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions, and (2) be independent with respect to the company, and any of its affiliates, for whom it is providing the attestation report, during the attestation and professional engagement period.

Significant experience in this context means having sufficient competence and capabilities necessary to (i) perform engagements in accordance with attestation standards and applicable legal and regulatory requirements; and (ii) enable the service provider to issue reports that are appropriate under the circumstances. In addition, a GHG emissions attestation provider is not independent if such attestation provider is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that such attestation provider is not, capable of exercising objective and impartial judgment on all issues encompassed within the attestation provider's engagement. The final rules provide some additional detail on determining independence of GHG emissions attestation providers, including consideration of whether mutual or conflicting interests exist, whether the attestation provider would be attesting to their own work, whether the attestation provider would be acting as management or an employee of the company or any affiliate, or be placed in a position of being an advocate for the company or any affiliate.

The form and content of the attestation report must follow the requirements set forth by the attestation standard(s) used by the GHG emissions attestation provider.

The adopting release noted that it would be permissible for a company to use the auditor of its financial statements to perform the GHG emissions attestation engagement, assuming the final rules' requirements for assurance providers are met. To the extent that the company's auditor is engaged to provide an attestation report in connection with the company's GHG emissions, or with respect to any other climate-related disclosures, the auditor would be required to

comply with applicable, existing pre-approval requirements. Even in circumstances where the GHG emissions attestation services are not subject to a pre-approval requirement, however, audit committees should consider what level of involvement would be appropriate for them to take with respect to the selection and retention of attestation providers for climate-related disclosures.

Consistent with the proposed rules, the final rules do not require a company to obtain an attestation report specifically covering the effectiveness of internal control over GHG emissions disclosure.

Amendment to Rule 436 of the Securities Act. In addition, Rule 436 of the Securities Act was amended to make clear that a report by an attestation provider covering Scope 1, Scope 2, and/or Scope 3 GHG emissions at a limited assurance level, as well as assurance regarding a company's GHG emissions disclosures provided in accordance with Item 1506(e) (i.e., assurance voluntarily obtained over GHG emissions disclosures) shall not be considered part of registration statements prepared or certified by a person within the meaning of sections 7 and 11 of the Securities Act.

One result of the amendments to Rule 436 is that a GHG emissions attestation provider that has performed an attestation engagement over GHG emissions at a limited assurance level is not required to submit a consent in connection with the registration statement under section 7 of the Securities Act. Note that this exception does not apply to reasonable assurance engagements.

To the extent that a company that voluntarily obtains assurance over its GHG emissions disclosures decides to voluntarily file or furnish an assurance report to the SEC at the limited assurance level, the GHG emissions attestation provider would be entitled to rely on the amendment to Rule 436 if its terms are met. In these circumstances, a company would be required to submit a letter from the GHG emissions attestation provider that acknowledges their awareness of the use in certain registration statements of any of their reports which are not subject to the consent requirement of section 7 pursuant to the amendments to Item 601 of Regulation S-K (discussed below). However, if a company voluntarily chooses to file or furnish an assurance report to the SEC that does not meet the requirements of Rule 436(i)(1) (e.g., the assurance report is provided at a reasonable assurance level), or if the company chooses to voluntarily disclose more information than is required under Item 1506(e) of Regulation S-K, then, by its terms, the exception in Rule 436 would not apply, and the assurance provider may be required to provide a consent in accordance with applicable statutory provisions and rules and would be subject to section 11 liability.

Amendment to Rule 601 of Regulation S-K. In order to ensure that a GHG emissions attestation provider has some awareness about whether its attestation report is included in a registration statement under the Securities Act, Rule 601 of Regulation S-K was amended to require companies to file as an exhibit to certain registration statements under the Securities Act, or reports on Form 10-K or 10-Q that are incorporated into these registration statements, a letter from the attestation provider that acknowledges its awareness of the use in certain registration statements of any of its reports which are not subject to the consent requirement of section 7. The same requirement applies for Form 20-F filers to the extent the Form 20-F is incorporated into a registration statement under the Securities Act; where Form 20-F is used a registration statement under the Securities Exchange Act of 1934 (the "Exchange Act"), this exhibit would not be required.

Additional Disclosure by the Company. Under Item 1506(d), in addition to including the GHG emissions attestation report, large accelerated filers and accelerated filers must disclose, alongside the GHG emissions disclosure to which the attestation report relates (based on information from the attestation provider as necessary) whether the GHG emissions attestation provider or engagement is subject to any oversight inspection program, and, if so, which program (or programs). Notably, this requirement is not limited to oversight inspection programs that include within their scope, or require the inspection of, the GHG emissions attestation engagement – companies must disclose any oversight inspection program the GHG emissions attestation provider is subject to for any type of engagement (e.g., a financial statement audit or other review). The adopting release notes that the PCAOB's inspection jurisdiction is limited to audits of issuers, brokers, and dealers and would not include engagements for the assurance of GHG emissions disclosure within its scope.

In addition, when there is a change in the company's GHG emissions attestation provider, accelerated and large accelerated filers subject to Item 1506(a) must disclose whether the former GHG emissions attestation provider resigned, declined to stand for re-appointment, or was dismissed and the date thereof. The company must state whether during the performance of the attestation engagement for the fiscal year covered by the attestation report there were any disagreements with the former GHG emissions attestation provider over any measurement or disclosure of GHG emission or attestation scope of procedures. The company must describe each such disagreement and state whether they have authorized the former GHG emissions attestation provider to respond fully to the inquiries of the successor GHG emissions attestation provider concerning the subject matter of each such disagreement. The final rules define the term "disagreements" for purposes of the disclosure and explain the circumstances in which it is sufficient to conclude that a disagreement has been communicated to the company.

Disclosure of Voluntary Assurance. Under Item 1506(e), any company that is not required to include a GHG emissions attestation report pursuant to Item 1506(a) must disclose the following if its GHG emissions disclosure was voluntarily subject to third-party assurance (regardless of whether the results of such assurance are disclosed):

- Identification of the service provider of such assurance;
- Description of the assurance standard used;
- Description of the level and scope of assurance services provided;
- Brief description of the results of the assurance services;
- Whether the service provider has any material business relationships with or has provided any material professional services to the company; and
- Whether the service provider is subject to any oversight inspection program, and if so, which program (or programs) and whether the assurance services over GHG emissions are included within the scope of authority of such oversight inspection program.

For purposes of this rule, assurance services are services performed in accordance with professional standards that are designed to provide assurance, which would include, for example, an examination providing reasonable assurance or a review providing limited assurance. Third-party "attestation" or "verification" services are generally not covered unless designed to provide limited or reasonable assurance.

Location of Disclosure. Under Item 1506(f), if, as permitted, a company elects to incorporate by reference its GHG emissions disclosure from its Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions disclosure relates or to provide this information in an amended annual report on Form 10-K or 20-F, then the company must include an express statement in its annual report indicating its intention to incorporate by reference the attestation report from either a quarterly report on Form 10-Q or amend its annual report on Form 10-K or Form 20-F to provide the attestation report by the due date specified in Regulation S-K Item 1505. The final rules do not require Form 8-K disclosure of a change in GHG emissions attestation provider.

Appendix D – Disclosure of Climate-Related Risks

Definitions of Climate-Related Risks. Item 1502(a) will require the disclosure of any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the company, including on its strategy, results of operations, or financial condition. The climate-risk disclosure requirement as adopted is based on the climate-related disclosure framework of the TCFD issued in 2017.

The final rule substitutes "results of operations" and "financial condition" for "consolidated financial statements" to be more consistent with other SEC rules relevant to risk assessment, such as the rules regarding MD&A. The final rules omit the proposed rule that would have allowed, but did not require, companies to describe actual and potential impacts of any climate-related opportunities it is pursuing; as with other voluntary disclosure, companies may elect to include such disclosure.

"Climate-related risks" is defined in Item 1500 as the actual or potential negative impacts of climate-related conditions and events on a company's business, results of operations, or financial condition. The final rule eliminates the proposed inclusion of negative climate-related impacts on a company's value chains from this definition, which means that such risks will generally not need to be disclosed except where such risk has materially impacted or is reasonably likely to materially impact the company's business, results of operations, or financial condition.

The definition of climate-related risks includes physical risks and transition risks. Pursuant to Item 1502(a), a company that has identified a climate-related risk pursuant to Item 1502 must disclose whether the risk is a physical risk or transition risk.

Physical Risks. Physical climate-related risks are defined in Item 1500 to include both acute risks and chronic risks to a company's business operations. Acute risks are defined as event-driven risks and may relate to shorter-term severe weather events, such as hurricanes, floods, tornadoes and wildfires. Chronic risks are defined as risks that businesses may face as a result of longer term weather patterns, such as sustained higher temperatures, sea level rise, drought, related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water.

Companies must provide information necessary to an understanding of the nature of the risk presented and the extent of their exposure to the risk. In a change to the proposed rule, companies are not required to disclose how two related physical risks interact (e.g., a drought (a chronic risk) might contribute to wildfires (an acute risk), or increased temperatures (a chronic risk) might contribute to severe storms (an acute risk)).

Item 1502(a)(1) will also require disclosure of the geographic location and nature of the properties, processes, or operations subject to the identified physical risk, giving companies the flexibility to determine the granularity of any location disclosures based on particular facts and circumstances, as long as they provide information necessary to understand the extent of the company's exposure to the material risk. The final rule omits the proposed requirement to provide the ZIP code of the properties subject to the physical risk.

Transition Risks. Transition risks are defined in Item 1500 as the actual or potential negative impacts on a company's business, results of operations, or financial condition attributable to regulatory, technological and market changes to address the mitigation of, or adaption to, climate-related risks. These risks include increased costs attributable to climate-related:

- Changes in law or policy;
- Reduced market demand for carbon-intensive products leading to deceased prices, or profits for such products;
- Devaluation or abandonment of assets;
- Risk of legal liability and litigation defense costs;
- Competitive pressures associated with the adoption of new technologies; or

- Reputational impacts (including those stemming from a company's customers or business counterparties) that might trigger changes to market behavior.

Item 1502(a)(2) will require companies to disclose the nature of any transition risk presented and the extent of their exposure to the risk. A non-exclusive list of disclosures that must be provided includes whether the risk relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences) and other transition-related factors, and how those factors impact the company. A company that has significant operations in a jurisdiction that has made a GHG emissions reduction commitment should consider whether it may be exposed to a material transition risk related to the implementation of the commitment.

The final rules incorporate lengthy phase-in periods to provide companies with additional time to develop, modify, and implement any processes and controls necessary to the assessment and reporting of any material climate-related risk.

Time Horizons. Item 1502(a) provides that in describing any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the company, a company should describe whether these risks are reasonably likely to manifest in the short-term (i.e., within the next 12 months), and separately in the long-term (i.e., beyond the next 12 months). This temporal standard is modeled on the current MD&A standard, which requires a company to analyze its ability to generate and obtain adequate amounts of cash to meet its requirements and plans for cash in the short-term (i.e., the next 12 months from the most recent fiscal period end required to be presented) and separately in the long-term (i.e., beyond the next 12 months).

Appendix E – Key Elements of Disclosure Regarding Impacts of Climate-Related Risks on Strategy, Business Model, and Outlook

Items 1502(b), (c), and (d) of Regulation S-K will require disclosure of a company's climate-related risks and the impacts of these risks on its strategy, business model, and outlook. Additionally, if applicable to the company's circumstances, the final rules will require disclosure of a company's transition plan pursuant to Item 1502(e), scenario analysis pursuant to Item 1502(f), and internal carbon pricing pursuant to Item 1502(g).

Disclosure of Material Impacts. Item 1502(b) will require a company to describe the actual and potential material impacts of any climate-related risk identified in Item 1502(a) on its strategy, business model, and outlook. The final rule adds a materiality qualifier to Item 1502(b) to clarify that the company is only required to disclose material impacts of climate-related risks that it has identified in response to Item 1502(a); if no impacts are material, a company need not disclose them. Specifically, Item 1502(b) requires the company to address a non-exclusive list of the potential material impacts of climate-related risks, which include impacts on its:

- Business operations, including the types and locations of its operations;
- Products or services;
- Suppliers, purchasers, or counterparties to material contracts, to the extent known or reasonably available;
- Activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes; and
- Expenditure for research and development.

The final rule replaces the proposed "suppliers and other parties in a company's value chain" with "suppliers, purchasers, or counterparties to material contracts, to the extent known or reasonably available."

Item 1502(c) will require companies to discuss whether and how they consider any actual or potential material impacts described in response to Item 1502(b) as part of their strategy, financial planning, and capital allocation. The final rule will require a company 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 company'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 disclosed transition plan relate to the company's business model or strategy.

Item 1502(c) omits proposed requirements to provide both current and forward-looking disclosures, and omits the proposed requirement to "describe how any of the financial statement metrics or GHG emission metrics relate to the company's business model or business strategy."

Item 1502(d)(1) will require companies to provide a narrative description of whether and how any climate-related risks described in response to Item 1502(a) have materially impacted or are reasonably likely to materially impact the company's business, results of operations, and financial condition. Additionally, Item 1502(d)(2) will require a company 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). This requirement is intended to capture material expenditures, both capitalized and expensed, made during the fiscal year for the purpose of climate-related risk mitigation or adaptation, in a manner more similar to the disclosure found in the MD&A than that found in the notes to the financial statements, particularly because the final Regulation S-X provisions, as described below, do not cover financial impacts caused by transition risks. As with Item 1502(e)(2), described below, compliance with Item 1502(d)(2) will be phased in, and companies will not be required to comply with either provision until the fiscal year immediately following the fiscal year of their initial compliance date for the Subpart 1500 rules based on their filer status.

Transition Plan Disclosure, If Used. Item 1502(e) will require companies to describe transition plans, if they have adopted transition plans to manage a material transition risk. “Transition Plan” is defined in Item 1500 to mean a company’s strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations. If a company does not have a transition plan, no disclosure is required under Item 1502(e).

If a company has adopted a transition plan, however, it is required to provide transition plan disclosure to address the particular facts and circumstances of the material transition risk. Under Item 1502(e)(1), a company that has adopted a transition plan must update its annual report disclosure each fiscal year by describing any actions taken during the year under the transition plan, including how such actions have impacted their business, results of operations, or financial condition. Under Item 1502(e)(2), these companies must also 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.

The final rule removes the reference to physical risks that was in the proposed rule. This change will make the transition plan disclosure requirement more consistent with voluntary disclosures that are based on the TCFD’s recommendations, which may mitigate the costs and complexity of complying with the final rule for companies already familiar with the TCFD’s framework. However, a company that faces a material physical risk must still disclose how it manages that risk as part of its risk management disclosure.

To the extent that a company’s disclosure made in response to Items 1502(d) or 1502(e) overlap with each other or with disclosure required under any other Subpart 1500 provision, the disclosure does not need to be repeated. As with Item 1502(d)(2), compliance with Item 1502(e)(2) will be phased in, in the manner described above. Additionally, together with the Item 1502(f) scenario analysis and Item 1502(g) internal carbon pricing disclosures described below, the Item 1502(e) transition plan disclosure will be subject to a safe harbor (in Item 1507), under which disclosures other than historical facts constitute “forward-looking statements” for purposes of the Private Securities Litigation Reform Act.

Disclosure of Scenario Analysis, If Used. Item 1502(f) will require the disclosure of scenario analysis under certain circumstances. “Scenario analysis” is defined in Item 1500 to mean “a process for identifying and assessing a potential range of outcomes of various possible future climate scenarios, and how climate-related risks may impact a company’s business strategy, results of operations, or financial condition over time.” The final rule will not require any company to conduct scenario analysis and no longer includes the example of potential scenarios to be considered (i.e., “an increase of no greater than 3ºC, 2ºC, or 1.5ºC above pre-industrial levels”).

If a company 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, the company 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 company must describe each such scenario, including a brief description of the parameters, assumptions, and analytical choices used, as well as the expected material impacts, including financial impacts, on the company under each such scenario.

The final rule adds a materiality qualifier regarding the disclosure of scenario analysis. Additionally, the final rule omits the provision from the proposed rule that would have required a company to describe the resilience of its business strategy in light of potential future changes in climate-related risks; eliminates reference to “any analytical tools”; adds the terms “brief” and “material” to describe the disclosure; removes an illustrative scenario analysis provided in the proposed rule; and removes the proposed provision stating that the disclosure should include both qualitative and quantitative information.

Disclosure of a Maintained Internal Carbon Price, If Use is Material. Item 1502(g) will require a company that uses internal carbon pricing to disclose certain information about its 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 company’s business strategy, results of

operations, or financial condition. "Internal carbon price" is defined in Item 1500 to mean "an estimated cost of carbon emissions used internally within an organization." If the company's use of internal carbon pricing is material, Item 1502(g) will require the company to disclose:

- The price per metric ton of 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.

Additionally, if the company uses more than one internal carbon price, it must provide the required disclosures for each internal carbon price and disclose its reasons for using different prices. Finally, Item 1502(g) provides that if the scope of entities and operations involved in the use of an internal carbon price is materially different from the organizational boundaries used for the purpose of calculating a company's GHG emissions pursuant to the final rule, the company must briefly describe this difference.

The final rule eliminates the proposed requirement to describe how a company uses an internal carbon price to evaluate and manage climate-related risks, along with the proposed requirement to disclose the company's rationale for selecting the internal carbon price.

Appendix F – Governance Disclosure

The final rules will require companies to make disclosures regarding the board and management's oversight of climate-related risks. These new disclosure requirements are similar in many respects to the SEC's new cybersecurity governance disclosure requirements, including as to "relevant expertise" of management and committees, discussed in our alert here.

Disclosure of Board Oversight of Climate-Related Risks. Item 1501(a) is intended to enhance investors' ability to evaluate a company's overall management of climate-related risks by improving their understanding of the board's role in climate-related risk oversight. Item 1501(a) will require:

- A description of the board of directors' oversight of climate-related risks;
- The identification, if applicable, of any board committee or subcommittee responsible for the oversight of climate-related risks and a description of the processes by which the board or such committee or subcommittee is informed about such risks;
- If the company has disclosed a climate-related target or goal pursuant to Item 1504 or a transition plan pursuant to Item 1502(e)(1), disclosure of whether and how the board oversees progress against the target or goal or transition plan.

The final rule does not include a materiality qualifier, and does not require disclosure for companies that do not exercise board oversight of climate-related risks. The final rule omits proposed requirements to disclose:

- The identity of specific board members responsible for climate-risk oversight;
- Whether any board member has expertise in climate-related risks and the nature of the expertise;
- How frequently the board is informed of such risks; and
- Information regarding whether and how the board sets climate-related targets or goals, including interim targets or goals.

Disclosure of Management's Assessment and Management of Climate-Related Risks. Item 1501(b) requires that companies describe management's role in assessing and managing material climate-related risks. Item 1501(b) specifies that companies should address, as applicable, the following non-exclusive list of disclosure items:

- Whether and which management positions or committees are responsible for assessing and managing climate-related risks, and the relevant expertise of such position holders or committee members in such detail as necessary to fully describe the nature of the expertise;
- The processes by which such positions or committees assess and manage climate-related risks; and
- Whether such positions or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.

Instruction 2 to Item 1501 provides a non-exhaustive list of what constitutes "relevant expertise" of management and committees responsible for assessing and managing climate-related risks, including: prior work experience in climate-related matters; any relevant degrees or certifications; and any knowledge, skills, or other background in climate-related matters.

The final rules do not require companies that do not engage in the oversight of material climate-related risks to disclose any information. The final rules omit the proposed rule that would have allowed, but did not require, companies to describe management's role in assessing and managing climate-related opportunities; as with other voluntary disclosure, companies may elect to include such disclosure.

Appendix G – Risk Management Disclosure

Item 1503 will require companies to describe any processes they have for identifying, assessing, and managing material climate-related risks. Specifically, Item 1503(a)(1) provides that a company should address, as applicable, how it identifies whether it has incurred or is reasonably likely to incur a material physical risk or transition risk. Additionally, Items 1503(a)(2) and (3) require companies to address, as applicable, how they: (i) decide whether to mitigate, accept, or adapt to a particular risk; and (ii) prioritize whether to address the climate-related risk. Pursuant to Item 1503(b), if a company is managing a material climate-related risk, it must also disclose whether and how any of the processes it described for identifying, assessing, and managing the material climate-related risk have been integrated into its overall risk management system or processes.

In a change from the proposed rule, the final Item 1503 contains a materiality qualifier. If a company has not identified a material climate-related risk, no disclosure is required.

The final rule also omits several prescriptive elements from the proposed rule, including provisions that would have required a company, when describing any processes for identifying and assessing climate-related risks, to disclose how the company:

- Determines the relative significance of climate-related risks compared to other risks;
- Considers existing or likely regulatory requirements of policies, such as GHG emissions limits, when identifying climate-related risks;
- Considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks; and
- Determines the materiality of climate-related risks, including how it assesses the potential size and scope of any identified climate-related risk, such as the risks identified in response to proposed Item 1502.

These provisions of the final rules more closely align with the TCFD and may therefore reduce compliance costs for companies familiar with reporting under that framework.

Several other elements were omitted or modified from the proposed rule, including the use in the final rules of the term “climate-related risk” instead of the term “physical risk or transition risk” from the proposed rules (which risks are nevertheless included in the definition of “climate-related risk” in Item 1500); the proposed requirement to disclose how a company determines to mitigate any high-priority risks; the proposed requirement for a company to disclose, if it has a separate board or management committee responsible for assessing and managing climate-related risks, how that committee interacts with the company’s board or management committee governing risks; and the proposed rule that allowed but did not require companies to describe any processes for identifying, assessing and managing climate-related opportunities.

Appendix H – Targets and Goals Disclosure

Companies will be required under Item 1504(a) to disclose any climate-related target or goal that they set if the target or goal has materially affected, or is reasonably likely to materially affect, their business, results of operations, or financial condition. The targets and goals disclosure requirement is consistent with the TCFD framework. This disclosure may be provided in disclosure provided in response to Item 1502 (Strategy, including transition plans) or Item 1503 (Risk Management), described above. The SEC noted in its adopting release that this requirement (1) is not limited to GHG emissions-related targets or goals, (2) applies to internal targets or goals that have not been publicly disclosed, and (3) does not depend on whether the target or goal is formally adopted by the board or CEO.

Companies that are disclosing targets and goals will be required under Item 1504(b) 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, including, as applicable (but not limited to), a description of:

- The scope of activities included in the target;
- The unit of measurement. The final rules eliminated the proposed disclosure item regarding whether a target is absolute or intensity-based because this information will likely be elicited by other required disclosure, such as the unit of measurement pertaining to the target or goal;
- 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 company has established a baseline for the target or goal, the defined baseline time period and the means by which progress will be tracked; and
- A qualitative description of how the company intends to meet its climate-related targets or goals. The final rule leaves it up to the company to determine what specific factors to highlight as part of the qualitative description of how it plans to meet its targets or goals. The final rule does not include the proposed examples that included a strategy to increase energy efficiency, transition to lower carbon products, purchase carbon offsets or RECs, or engage in carbon removal and carbon storage

Item 1504(c) will require companies to disclose any progress (not just material progress) toward meeting the target or goal and how such progress has been achieved, updating the disclosure each year by describing any relevant actions taken during that year. This disclosure will require a discussion of any material impacts to the company'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, and 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. Companies will have flexibility to explain qualitatively the nature of any disclosed expenditure and how it is a direct result of progress under a disclosed target or goal.

Additionally, when considering which expenditures related to progress under a disclosed target or goal are material over the relevant period and therefore require disclosure, companies should consider whether overall expenditures related to progress under a disclosed target or goal are material in the aggregate and, if so, provide appropriate disclosure.

Cross-references to the financial statements are permitted to the extent material impacts on financial estimates and assumptions as a direct result of the target or goal are disclosed in response to Rule 14-02(h) of Regulation S-X.

Companies are not be required to comply with the requirements of Item 1504(c)(2) on quantitative and qualitative disclosure of material expenditures and impacts on financial estimates and assumptions until the fiscal year immediately following the fiscal year of its initial compliance date for the subpart 1500 rules based on its filer status.

Carbon Offsets and RECs Disclosure Requirement. If carbon offsets or RECs have been used as a material component of a company's plan to achieve climate-related targets or goals, then the company will be required to

disclose under Item 1504(d): the amount of carbon avoidance, reduction or removal represented by the offsets or the amount of generated renewable energy represented by the RECs; the nature and source of the offsets or RECs; a description and location of the underlying projects; any registries or other authentication of the offsets or RECs; and the cost of the offsets or RECs. Relatedly, a company that relies on carbon offsets or RECs as a material component of its plan to achieve its targets or goals might need to consider whether fluctuating supply or demand, and corresponding variability of price, related to carbon offsets or RECs, presents an additional material risk that is required to be disclosed when discussing its plan to achieve such target or goal.

Safe Harbor. Targets and goals disclosure under Item 1504 other than historical facts will be subject to a safe harbor (in Item 1507), under which disclosures constitute "forward-looking statements" for purposes of the Private Securities Litigation Reform Act.

Targets and Goals Disclosure Requirement – Comparison to California

As illustrated below, anti-greenwashing focused Item 1504 requiring climate-related targets and goals disclosure differs in many respects to California's Voluntary Carbon Market Disclosures Act (AB 1305), that was enacted in October 2023 and is currently effective.

Item 1504	AB 1305
• Applies to public companies that have set any climate-related target or goal if such target or goal has materially affected, or is reasonably likely to materially affect, their business, results of operations, or financial condition; materiality qualifier, prospective focus, not limited to GHG emissions targets/goals	• Applies in relevant part to businesses operating in California that make claims implying the company has achieved net zero emissions, claims implying the company or a product is carbon neutral, claims implying the company has made significant carbon dioxide or GHG emissions reductions; not limited to public companies, no materiality qualifier, retrospective focus
• Disclose information or explanation necessary to an understanding of the material impact or reasonably likely material impact of the target or goal, and any progress (not just material progress) toward meeting the target or goal and how such progress has been achieved	• Disclose information pertaining to GHG emissions associated with claims including information documenting how, if at all, claim was determined to be accurate or actually accomplished, and how interim progress toward goal is being measured
• Disclose carbon offsets or RECs that have been used as a material component of a company's plan to achieve climate-related targets or goals	• Disclose voluntary carbon offsets purchased or used by company making claims regarding achievement of net zero emissions, carbon neutral status about the company or a product, or has made significant reductions to GHG emissions; RECs not covered, no materiality qualifier
• Disclose the amount of carbon avoidance, reduction or removal represented by the offsets or the amount of generated renewable energy represented by the RECs, the nature and source of the offsets or RECs, a description and location of the underlying projects, and the cost of the offsets or RECs; see also additional disclosure required in notes to the financial statements including aggregate amount of carbon offsets and RECs expenses and recognized, aggregate losses incurred on capitalized carbon offsets and RECs, and beginning and ending balances of capitalized	• For each voluntary carbon offset project or program, disclose name of entity selling the offset and the offset registry or program, project identification number, project name as listed in registry or program, offset project type (including whether offsets purchased were derived from a carbon removal and/or avoided emission) and site location, and specific protocol used to estimate emissions reductions or removal benefits; cost information not required to be disclosed

Item 1504	AB 1305
carbon offsets and RECs (Rule 14-02(e) of Regulation S-X), discussed below	
• Disclose any registries or other authentication of offsets or RECs; other independent assurance or verification not required	• Disclose any independent third-party verification of company data and claims
• Disclosure in SEC filings	• Disclosure on corporate website

Appendix I – Financial Statement Requirements

In significant changes from the proposal, the SEC both eliminated disclosure of impacts on each line item of the financial statements and narrowed the scope of the items covered. In lieu of line-item disclosure, the financial statement disclosure must be included in a note to the financial statements. Moreover, the only items covered in scope are capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, as well as those related to carbon offsets and RECs. While there are no definitions of severe weather events and other natural conditions included in the rules, the SEC included non-exclusive examples in the rules, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise. SRCs and EGCs are not exempt from the financial statement disclosure requirements included in the final rules.

The SEC maintained its proposed one-percent threshold for impacts of severe weather events and other natural conditions but it will apply to aggregate amounts (not on a line item basis), and the requirements to disclose capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs (as to the latter, only if carbon offsets and RECs have been used as a material component of a company's plans to achieve its disclosed climate related targets or goals).

The first year of compliance is only with respect to a company's most recent completed fiscal year; the first year of compliance will depend on filer status, as discussed under Compliance Dates above. The year afterwards, there will be two years of compliance and then going forward all three years included in the audit will be covered. Because these disclosures are included in a note to the financial statements, they will be subject to the same financial statement audit and internal control over financial reporting as similar financial disclosures.

As set forth in Article 14 of Regulation S-X, key aspects of the financial statement rules are disclosure of:

- **Aggregate amount of expenditures expensed as incurred and losses resulting from severe weather events and other natural conditions.**
  - An example included in the rule is that a company may be required to disclose the amount of expense or loss, as applicable, to restore operations, relocate assets or operations affected by the event or other natural condition, retire affected assets, repair affected assets, recognize impairment loss on affected assets, or otherwise respond to the effect that severe weather events and other natural conditions had on business operations. Disclosure must separately identify where the expenditures expensed as incurred and losses are presented in the income statement.
- **Aggregate amount of capitalized costs and charges, excluding recoveries, resulting from severe weather events and other natural conditions.**
  - An example included in the rule is that a company may be required to disclose the amount of capitalized costs or charges, as applicable, to restore operations, retire affected assets, replace or repair affected assets, recognize an impairment charge for affected assets, or otherwise respond to the effect that severe weather events and other natural conditions had on business operations. Disclosure must separately identify where the capitalized costs and charges are presented in the balance sheet.
- **Carbon offsets and RECs.** If carbon offsets or RECs have been used as a material component to achieve disclosed climate-related targets or goals, disclose the:
  - Aggregate amount of carbon offsets and RECs expensed;
  - Aggregate amount of capitalized carbon offsets and RECs recognized; and the
  - Aggregate amount of losses incurred on the capitalized carbon offsets and RECs, during the fiscal year. In addition, disclose the beginning and ending balances of the capitalized carbon offsets and RECs for the fiscal year. Disclosure must separately identify where the expenditures expensed, capitalized costs, and losses are presented in the income statement and the balance sheet.

- If such disclosure requirement applies, the company must state its accounting policy for carbon offsets and RECs as part of the contextual information discussed below.

With regard to the above disclosure, the rules also provide the following:

- **Contextual information.** The financial statement footnote must include how each specified financial statement effect was derived, including a description of significant inputs and assumptions used, significant judgments made, other information that is important to understand the financial statement effect and, if applicable, policy decisions made by the company to calculate the specified disclosures.
- **Recoveries.** The above disclosure must include separately the aggregate amount of any recoveries (such as insurance proceeds) 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 are disclosed. Disclosure must separately identify where the recoveries are presented in the income statement and the balance sheet.
- **De Minimis Exceptions.** Disclosure of the aggregate amount of expenditure expensed as incurred and losses is not required if the aggregate amount of expenditures expensed as incurred and losses is less than the lower of $100,000 for the relevant fiscal year, or one-percent of the absolute value of income or loss before income tax expense or benefit for the relevant fiscal year. Disclosure of the aggregate amount of capitalized costs and charges incurred is not required if the aggregate amount of the absolute value of capitalized costs and charges is less than the lower of $500,000 for the relevant fiscal year, or one-percent of the absolute value of stockholders' equity or deficit at the end of the fiscal year.
  - The final rules use different denominators for the disclosure thresholds as compared to the proposal and include de minimis thresholds to help respond to commenters' concerns about burdens.
- **Attribution.** A capitalized cost, expenditure expensed, charge, loss, or recovery results from a severe weather event or other natural condition when the event or condition is a significant contributing factor in incurring the capitalized cost, expenditure expensed, charge, loss, or recovery. If an event or condition is a significant contributing factor in incurring a cost, expenditure, charge, loss, or recovery, then the entire amount of such cost, expenditure, charge, loss, or recovery must be included in the disclosure.
- **Financial estimates and assumptions.** Disclose whether the estimates and assumptions used to produce the consolidated financial statements were materially impacted by exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions, or any climate-related targets or transition plans that have been disclosed. Provide a qualitative description of how the development of such estimates and assumptions were impacted by such events, conditions, targets, or transition plans.

As discussed in greater detail above, instead of requiring the disclosure of expenditures related to transition activities in the financial statements as proposed, companies will be required to disclose material expenditures related to (1) activities to mitigate or adapt to climate-related risk (in management's assessment), (2) disclosed transition plans, and (3) disclosed targets and goals, outside of the financial statements as part of the amendments to Regulation S-K.

The SEC emphasized in the adopting release that companies still must consider under the current GAAP rules whether additional line-item disclosure of material impacts driven by climate-related matters is required.

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If you have questions concerning the contents of this Alert, or would like more information, please speak to your regular contact at Weil or to any of the following authors:

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