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SEC Proposes New Climate Disclosure Requirements

The SEC has proposed significant new disclosure requirements (available here) to enhance and standardize disclosures regarding climate-related risks. Unlike existing climate and ESG disclosure requirements, which have largely been principles-based, the new proposal, while still including materiality thresholds, also includes more prescriptive, line-item requirements. To enhance comparability and consistency, the SEC has modeled its climate disclosure framework proposal in part on the U.K.'s Task Force on Climate-Related Financial Disclosure ("TCFD") and the Greenhouse Gas Protocol ("GHG Protocol") emissions reporting framework, as was urged by many commentators. These proposed rules are the culmination of a year-long process of inquiry and public input, which has already seen over 600 unique comment letters submitted to the SEC. Comments to this proposal are due the later of 30 days after publication in the *Federal Register* or May 9, 2022, and we expect there will be a significant number of comments from many constituencies.

These proposed requirements would apply to domestic registrants as well as foreign private issuers filing on Form 20-F. However, the SEC has not at this time proposed that the requirements would apply to MJDS issuers filing on Form 40-F. The SEC is also proposing a multi-year phase-in for the disclosure requirements based on company filing status.

The proposed new disclosure requirements would be set forth in a new Item 1500 of Regulation S-K and Article 14 of Regulation S-X. Registrants would be required to present in their annual reports (or registration statements) in a separate section titled "Climate-Related Disclosure" and in the financial statements, information regarding the following:

- climate-related risks (and opportunities):
  - company board and management oversight and governance of climate-related risks;
  - the material impact they have had or are likely to have on business and financial statements;
  - how they affect or are likely to affect strategy, business model and outlook;
- climate-related risk management processes;
- certain climate-related financial statement metrics and related disclosures in a note to audited financial statements;
- greenhouse gas ("GHG") emissions; including Scope 1 and Scope 2[1] GHG emissions, and, if material or if the registrant has set emissions reduction targets that include them, Scope 3[2] GHG emissions (smaller reporting companies would not be required to present Scope 3 GHG emissions); and

[1] Scope 1 emissions are direct GHG emissions from operations that are owned or controlled by a registrant. Scope 2 emissions are indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant.

[2] Scope 3 emissions are all indirect GHG emissions not otherwise included in a registrant's Scope 2 emissions, which occur in the upstream and downstream activities of a registrant's value chain.

- climate-related targets or goals, and any transition plans.

These disclosure requirements would be phased in, depending on the registrant's filing status:

- large accelerated filers would be required to comply in their annual reports for fiscal year 2023 (filed in 2024);
- accelerated and non-accelerated filers would be required to comply in their annual reports for fiscal year 2024 (filed in 2025); and
- smaller reporting companies would be required to comply in their annual reports for fiscal year 2025 (filed in 2026).

Registrants would have an additional year to comply with the Scope 3 disclosure requirements, if applicable. The Scope 3 disclosures would be subject to a safe harbor from liability under federal securities laws.

Large accelerated filers and accelerated filers would be required to include an attestation report providing assurance on Scope 1 and Scope 2 GHG emissions from a "GHG emissions attestation provider", which must meet certain specified requirements, but is not required to be an independent accounting firm. This assurance on the Scope 1 and Scope 2 disclosures also would be subject to additional phase-in requirements:

- large accelerated filers would be required to include an attestation support providing limited assurance on the Scope 1 and Scope 2 metrics for fiscal year 2024 (filed in 2025) and reasonable assurance for fiscal year 2026 (filed in 2027);
- accelerated filers would be required to include an attestation support providing limited assurance on the Scope 1 and Scope 2 metrics for fiscal year 2025 (filed in 2026) and reasonable assurance for fiscal year 2027 (filed in 2028).

A more detailed summary and analysis of these proposed disclosure requirements will follow.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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