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SEC Adopts Final Rules on The Enhancement and Standardization of Climate-Related Disclosures for Investors; Recording of ICI Overview of the Final Rules Now Available

[35645]

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TO: Accounting/Treasurers Committee
Asia Regulatory and Policy Committee
ESG Advisory Group
ESG Fund Disclosure Working Group
ESG Public Company Disclosure Working Group
ESG Task Force
Europe Regulatory and Policy Committee
SEC Rules Committee
Small Funds Committee RE: SEC Adopts Final Rules on The Enhancement and Standardization of Climate-Related Disclosures for Investors; Recording of ICI Overview of the Final Rules Now Available

On March 6, 2024, the SEC voted 3-2, along party lines, to adopt final rules on The Enhancement and Standardization of Climate-Related Disclosures for Investors.[1] The rules apply to public companies.

ICI held a members-only call to provide an overview of the final rules on Friday, March 8. A recording of the call is available at https://www.ici.org/video/24-sec-climate-risk-rule-call.

The final rules require public companies to disclose certain climate-related information in registration statements and annual reports. The final rules' reporting framework has structural elements, definitions, concepts, and, in some cases, substantive requirements that are similar to those in the Task Force on Climate-related Financial Disclosure reporting framework. Similarly, the Commission used concepts developed by the GHG Protocol for aspects of the final rules. The final rules require foreign private issuers that file Exchange Act annual reports or registration statements to provide the same climate-related disclosures as domestic registrants. The Commission declined to exempt other registrants,

such as BDCs, REITs, or issuers of registered non-variable insurance contracts from the final rules.

The final rules are already subject to a number of legal challenges.[2]

Significant Differences from the Proposal

The final rules reflect a number of modifications to the proposed rules, including:[3]

- Eliminating the proposed requirement to provide Scope 3 emissions disclosure (which the proposal would have required in certain circumstances).
- Eliminating the proposed requirement for all registrants to disclose Scope 1 and Scope 2 emissions and instead requiring such disclosure only for large accelerated filers and accelerated filers, on a phased in basis, and, importantly, only when those emissions are material.
- Modifying the proposed assurance requirement covering Scope 1 and Scope 2 emissions for large accelerated filers and accelerated filers by extending the reasonable assurance phase in period for large accelerated filers and requiring only limited assurance for accelerated filers.
- Extending certain phase in periods.

The final rules are summarized below.

Disclosure of Climate-Related Risks (pages 73–106)

Definitions of Climate-Related Risks and Climate-Related Opportunities (page 73)

The final rules require the disclosure of any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its business strategy, results of operations, or financial condition. Similar to the rule proposal, the final rules define climate-related risks to mean the actual or potential negative impacts of climate-related conditions and events on a registrant's business, results of operations, or financial condition. A climate-related risk involving a registrant's value chain would generally not need to be disclosed except where such risk has materially impacted or is reasonably likely to materially impact the registrant's business, results of operations, or financial condition.

Similar to the rule proposal, the definition of climate-related risks in the final rules includes both physical risks and transition risks. Also similar to the proposed definition, the final rules define "physical risks" to include both acute and chronic risks to a registrant's business operations. "Acute risks" is defined in the final rules as event-driven risks and may relate to shorter-term severe weather events, such as hurricanes, floods, tornadoes, and wildfires. "Chronic risks" is defined as those risks that the business may face as a result of longer term weather patterns, such as sustained higher temperatures, sea level rise, and drought, as well as related effects such as decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water. The final rules define "transition risks" largely as proposed to mean the actual or potential negative impacts on a registrant's business, results of operations, or financial condition attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks.

The final rules provide that a registrant that has identified a climate-related risk must disclose whether the risk is a physical or transition risk, and provide information necessary to an understanding of the nature of the risk presented and the extent of the registrant's

exposure to the risk. The final rules provide a non-exclusive list of disclosures that a registrant must disclose as applicable: a) if a physical risk, whether it may be categorized as an acute or chronic risk, and the geographic location and nature of the properties, processes, or operations subject to the physical risk; and b) if a transition risk, whether it relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), or other transition-related factors, and how those factors impact the registrant.

Consistent with the rule proposal, the final rules state that a registrant that has significant operations in a jurisdiction that has made a greenhouse gas (GHG) emissions reduction commitment should consider whether it may be exposed to a material transition risk related to the implementation of the commitment.

Time Horizons and the Materiality Determination (page 100)

In a change from the rule proposal, the final rules provide that in describing any climate-related risks that have materially impacted or are reasonably likely to have a material impact, a registrant should describe whether such risks are reasonably likely to manifest in the short-term (i.e., the next 12 months) and separately in the long-term (i.e., beyond the next 12 months).

Disclosure Regarding Impacts of Climate-Related Risks on Strategy, Business Model, and Outlook (pages 106–160)

Disclosure of Material Impacts (page 106)

The final rules require a registrant to describe the actual and potential material impacts of any climate-related risk identified in response to the final rules' requirements on the registrant's strategy, business model, and outlook. The Commission added an explicit materiality qualifier to clarify that a registrant is only required to disclose material impacts of climate-related risks that it has identified in response to the final rules. The final rules require disclosure of material impacts of climate-related risks, and potential material impacts on the registrant's: 1) business operations, including the types and locations of its operations; 2) products or services; 3) suppliers, purchasers, or counterparties to material contracts, to the extent known or reasonably available; 4) activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes; and 5) expenditure for research and development.

The final rules require a registrant to discuss whether and how the registrant considers any material impacts described in response to the requirements of the final rules as part of its strategy, financial planning, and capital allocation. The final rules require a registrant to include in its disclosure, as applicable: a) whether the impacts of the climate-related risks described in response to the final rules have been integrated into the registrant's business model or strategy, including whether and how resources are being used to mitigate climate-related risks; and b) how any of the targets referenced or in a described transition plan relate to the registrant's business model or strategy.

Transition Plan Disclosure (page 125)

The final rules require a registrant to describe a transition plan if it has adopted the plan to manage a material transition risk. Like the rule proposal, the final rules define a "transition plan" to mean a registrant'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. The final rules do not mandate that registrants adopt a transition plan. If a registrant does not have a plan, no disclosure is required under the final rules. A registrant that is required to provide transition plan disclosure will have the flexibility to provide disclosure that addresses the particular facts and circumstances of its material transition risk. Similar to the proposed rules, the final rules require a registrant to update its annual report disclosure about the transition plan each fiscal year by describing any actions taken during the year under the plan, including how such actions have impacted the registrant's business, results of operations, or financial condition.

In a modification of the proposed rules, which would have generally required the disclosure of the relevant metrics and targets used to identify and manage transition risk under a transition plan, the final rules require a registrant, as part of its updating disclosure, to include quantitative and qualitative disclosure of material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the disclosed actions taken under the plan.

Disclosure of Scenario Analysis If Used (page 140)

The final rules provide that, if a registrant uses scenario analysis to assess the impact of climate-related risks on its business, results of operations, or financial condition, and if, based on the results of scenario analysis, a registrant determines that a climate-related risk is reasonably likely to have a material impact on its business, results of operations, or financial condition, then the registrant must describe each such scenario. The registrant must include a brief description of the parameters, assumptions, and analytical choices used, as well as the expected material impacts, including financial impacts, on the registrant under each such scenario.

Disclosure of a Maintained Internal Carbon Price (page 151)

The final rules require a registrant that uses internal carbon pricing to disclose certain information about the internal carbon price, if such use is material to how it evaluates and manages a climate-related risk that it has identified as having materially impacted or is reasonably likely to have a material impact on the registrant, including on its business strategy, results of operations, or financial condition. If a registrant's use of internal carbon pricing is material, similar to the proposed rules, the final rules require it to disclose in units of the registrant's reporting currency: a) the price per metric ton of carbon dioxide equivalent; and b) the total price, including how the total price is estimated to change over the time periods referenced in the final rules, as applicable.

Governance Disclosure (page 160–184)

Disclosure of Board Oversight (page 160)

The final rules require a description of a board of directors' oversight of climate-related risks, as proposed. The final rules also require 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. Further, if there is a target, goal or transition plan disclosed pursuant to the final rules, registrants are required to disclose whether and how the board oversees progress against the target or goal or transition plan. The Commission adopted the proposed requirement to identify any board committee or subcommittee responsible for the oversight of climate-related risks, if a registrant has such a committee or

subcommittee. Consistent with ICI's recommendation, the final rules do not include a requirement to disclose the identity of any board members or board committee responsible for the oversight of climate-related risks and whether any director has expertise in climate-related risks. The Commission adopted the proposed requirement to describe the processes by which the board or any board committee or subcommittee is informed about climate-related risks, but eliminated the requirement to describe the frequency of these discussions. No materiality qualifier applies to this portion of the final rules.

Disclosure of Management Oversight (page 172)

The final rules, like the proposed rules, require that registrants describe management's role in assessing and managing climate-related risks. The final rules also specify that a registrant should address, as applicable, a non-exclusive list of disclosure items when describing management's role in assessing and managing the registrant's material climate-related risks.[4] The Commission adopted as proposed the requirement for a description of the relevant expertise of position holders or members responsible for assessing and managing climate-related risk. The final rules do not require registrants that do not engage in the oversight of material climate-related risk to disclose any information.

Risk Management Disclosure (pages 184–199)

In a change from the proposal, the Commission added a materiality qualifier to the disclosure item, such that the final rules require registrants to disclose any existing processes for the identification, assessment, and management of material climate-related risks. If a registrant has not identified a material climate-related risk, no disclosure is required. The final rules removed a number of prescriptive elements present in the proposed rule, and the final rules allow a registrant, when describing its processes for identifying, assessing, and managing material climate-related risks, to determine which factors are most significant, and therefore should be addressed, based on its particular facts and circumstances.

The final rules provide that a registrant should address, as applicable, how it identifies whether it has incurred or is reasonably likely to incur a material physical or transition risk. Similar to the rule proposal, the final rules provide that a registrant should address, as applicable, how it: a) decides whether to mitigate, accept, or adapt to the particular risk; and b) prioritizes whether to address the climate-related risk. Consistent with ICI's recommendation, the final rules provide that, if a registrant is managing a material climate-related risk, it must disclose whether and how any of the processes it has described for identifying, assessing, and managing the material climate-related risk have been integrated into the registrant's overall risk management system or processes.

Targets and Goals Disclosure (pages 199–222)

The Overall Disclosure Requirement (page 210)

The final rules require a registrant to disclose any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition. Under the final rules, a registrant must 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, a description of: (1) the scope of activities included in the target; (2) the unit of measurement; (3) the defined time horizon by which the target is intended to be achieved and whether the time horizon is based on goals established by a climate-related treaty, law, regulation, policy, or organization; (4) if the registrant has

established a baseline for the target or goal, the defined baseline time period and the means by which progress will be tracked; and (5) a qualitative description of how the registrant intends to meet these climate-related targets or goals.

Any target or goal – internal or publicly announced – meeting the conditions of the final rules (including that it is material) will need to be disclosed regardless of the particular issues it addresses, if that target or goal is considered climate-related in the registrant's particular circumstances and if achieving such target or goal would materially impact its business, results of operations, or financial condition.

The Carbon Offsets and RECs Disclosure Requirement (page 218)

Similar to the proposed rule, the final rules include a disclosure requirement about a registrant's use of carbon offsets or renewable energy credits (RECs). Unlike the proposed rule, however, a registrant is required to disclose certain information about the carbon offsets or RECs under the final rules only if they have been used as a material component of a registrant's plan to achieve climate-related targets or goals. Consistent with ICI's recommendation, the Commission added a materiality qualifier to the final rules, such that registrants will need to make a determination, based upon their specific facts and circumstances, about the importance of such carbon offsets and credits to their overall transition plan and provide disclosure accordingly. If carbon offsets or RECs have been used as a material component of a registrant's plan to achieve climate-related targets or goals, then the registrant will be required to 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; any registries or other authentication of the offsets or RECs; and the cost of the offsets or RECs.

GHG Emissions Disclosure (pages 222–262)

Overview of the GHG Emissions Disclosure Requirement (page 244)

Instead of requiring, as proposed, the disclosure of Scopes 1 and 2 emissions by all registrants regardless of their materiality, the final rules require the disclosure of Scope 1 emissions and/or Scope 2 emissions metrics by large accelerated filers (LAFs) and accelerated filers (AFs) that are not smaller reporting companies (SRCs) or emerging growth companies (EGCs), on a phased in basis, if such emissions are material.

The Adopting Release noted the Commission's intent that a registrant apply traditional notions of materiality under the Federal securities laws when evaluating whether its Scopes 1 and/or 2 emissions are material. It further stated that:

as with other materiality determinations under the Federal securities laws and Regulation S-K, the guiding principle for this determination is whether a reasonable investor would consider the disclosure of an item of information, in this case the registrant's Scope 1 emissions and/or its Scope 2 emissions, important when making an investment or voting decision or such a reasonable investor would view omission of the disclosure as having significantly altered the total mix of information made available.

Presentation of the GHG Emissions Metrics and Disclosure of the Underlying Methodologies and Assumptions (page 249)

In a change from the rule proposal, which would have required the disclosure of a

registrant's GHG emissions both disaggregated by each constituent GHG and in the aggregate, the final rules require the disclosure of any described scope of emissions to be expressed in the aggregate in terms of carbon dioxide equivalent. In addition, if a registrant is required to disclose its Scope 1 and/or Scope 2 emissions, and any constituent gas of the disclosed emissions is individually material, it must also disclose such constituent gas disaggregated from the other gases. Consistent with the rule proposal, under the final rules, a registrant that is required to disclose its Scope 1 and/or Scope 2 emissions must disclose those emissions in gross terms by excluding the impact of any purchased or generated offsets. Also, similar to the rule proposal, the final rules require a registrant to describe the methodology, significant inputs, and significant assumptions used to calculate the registrant's disclosed GHG emissions.

Like the rule proposal, the final rules require a registrant to disclose the organizational boundaries used when calculating its Scope 1 emissions and/or its Scope 2 emissions. Unlike the rule proposal, however, which would have required a registrant to use the same scope of entities and other assets included in its consolidated financial statements when determining the organizational boundaries for its GHG emissions calculation, the final rules provide that the registrant must disclose the method used to determine the organizational boundaries, and if the organizational boundaries materially differ from the scope of entities and operations included in the registrant's consolidated financial statements, the registrant must provide a brief explanation of this difference in sufficient detail for a reasonable investor to understand. In addition, when describing its organizational boundaries, a registrant must describe the method used to determine those boundaries.

Whereas the rule proposal would have required the disclosure of the calculation approach, including any emission factors used and the source of the emission factors, and any calculation tools used to calculate the GHG emissions, the final rules require a brief description of, in sufficient detail for a reasonable investor to understand, 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.

Unlike the rule proposal, which would have required a registrant to disclose its GHG emissions in both absolute terms and terms of intensity, under the final rules, registrants are not required to disclose GHG emissions in terms of intensity. Like the rule proposal, the final rules provide that a registrant may use reasonable estimates when disclosing its GHG emissions as long as it also describes the assumptions underlying, and its reasons for using, the estimates.

Exclusions from the GHG Emissions Disclosure Requirement (page 256)

Consistent with ICI's recommendation, the Commission did not adopt a provision that would require a registrant to disclose its Scope 3 emissions at this time. The Adopting Release did note, however, that:

because many registrants will be required to disclose their Scope 3 emissions under foreign or state law or regulation, Scope 3 calculation methodologies may continue to evolve, mitigating many of the concerns noted by commenters about the disclosure of Scope 3 emissions. While such developments may encourage more registrants to disclose their Scope 3 emissions in Commission filings, at the present time, because of the potential costs and difficulties related to Scope 3 emissions reporting, the disclosure of Scope 3 emissions in Commission filings will remain voluntary.

Unlike the proposed rule, which would have exempted SRCs from the requirement to disclose Scope 3 emissions, the final rule exempts SRCs and EGCs from any requirement to disclose its GHG emissions, including its Scopes 1 and 2 emissions.

Timeline for Reporting GHG Emissions Metrics (page 258)

Under the final rules, if a registrant is required to disclose its Scope 1 and/or Scope 2 emissions, it must disclose those emissions for its most recently completed fiscal year and, to the extent previously disclosed in a Commission filing, for the historical fiscal year(s) included in the consolidated financial statements included in the filing. By contrast, a registrant that has not previously disclosed its Scopes 1 and 2 emissions in a Commission filing for a particular historical fiscal year will not be required to estimate and report those emissions for such period.

Attestation Over GHG Emissions Disclosure (pages 262–387)

The proposed rules would have required a large-accelerated filer and an accelerated filer to obtain an attestation report covering its Scope 1 and Scope 2 GHG emissions disclosures. Under the proposed rules these filers would have initially obtained a limited assurance report on their GHG emissions disclosures and later transition to a reasonable assurance report. The proposed rules provided minimum attestation report requirements, minimum standards for attestation frameworks, and would have required an attestation report provider to meet certain minimum qualifications. The proposed rules did not specify what type of entity could serve as an attestation provider but make clear that the attestation provider did not have to be a registered public accounting firm.

In its comment letter ICI supported subjecting the Scope 1 and Scope 2 GHG Emissions disclosures to limited assurance. ICI opposed subjecting the GHG Emissions disclosures to reasonable assurance, arguing that the costs associated with reasonable assurance would have outweigh the benefits. ICI also noted that because the disclosures would be included in the Form 10-K filing, they would be subject to the registrant's Disclosure Controls and Procedures thus enhancing their reliability. ICI also supported the Commission's proposed approach to assurance providers, reasoning that the proposed expertise and independence requirements combined with the disclosures about the assurance framework would sufficiently protect and inform investors relying on the assurance report.

In the final rules, the disclosure of Scope 1 and Scope 2 emissions of accelerated and large accelerated filers will be subject to limited assurance by an independent provider beginning with the third fiscal year of reporting the emissions. These disclosures by large accelerated filers will subsequently be subject to reasonable assurance, beginning with the seventh fiscal year of reporting the emissions. Assurance providers will need to be independent and have significant experience in measuring, analyzing, reporting or attesting to GHG emissions. The rules do not specify the attestation standards that will need to be used but establish criteria for the standards that will be acceptable (e.g., publicly available for no cost, widely used).

Registrants will also be required to make additional disclosures about the current assurance provider (e.g., whether the provider is subject to an oversight inspection program and whether the engagement is in the scope of that program) and any previously engaged providers who resigned, declined to stand for reappointment or were dismissed. Registrants that voluntarily obtain assurance on GHG emissions when it is not required will also need to provide certain disclosures about the engagement and the provider.

Safe Harbor for Certain Climate-Related Disclosures (pages 387–402)

The final rules include a provision stating that disclosures (other than historic facts) regarding the following constitute "forward-looking statements" for purposes of the Private Securities Litigation Reform Act (PSLRA) safe harbors: transition plans, scenario analysis, internal carbon pricing, and targets and goals.

The final rules provide that the PSLRA safe harbors will apply to these forward-looking statements in connection with certain transactions and disclosures by certain issuers notwithstanding that these transactions and issuers are excluded from the PSLRA safe harbors in subparagraphs (a) and (b) of section 27A of the Securities Act and section 21E of the Exchange Act.

Financial Statement Effects and Disclosures (REGULATION S-X ARTICLE 14) (pages 402–543)

The proposed rules would have required financial statement disclosure in three categories: 1) Financial Impact Metrics; 2) Expenditure Metrics; and 3) Financial Estimates and Assumptions. All of these would have been required if the sum of the absolute value of all impacts on these line associated items was one percent or more. The proposed rules would have required disclosure of Financial Estimates and Assumptions impacted by severe weather events and other natural conditions and transition activities. The proposed disclosures would have been included in a note to the financial statements. As part of the registrant's financial statements, they would be subject to the registrant's Internal Control over Financial Reporting and would be subject to audit by the registrant's independent accountant.

In its comment letter on the proposal the ICI opposed the financial statement metrics. ICI indicated that the one percent threshold was too low and would overload investors with inconsequential information complicating their analysis of the company. In addition, ICI expressed the view that the proposed disclosures would be highly judgmental and would thus introduce comparability concerns. Finally, ICI noted that the proposed line-by-line disclosure of impacts is inconsistent with the way investors consider and evaluate climate-related events and transition activities. ICI recommended that the Commission omit the proposed amendments to Regulation S-X and instead adopt the proposed Regulation S-K narrative discussion of whether and how any identified climate-related risks have affected or are reasonably likely to affect the company's consolidated financial statements.

The final rules scale back from the proposal and registrants will be required to disclose in a note to the audited financial statements the following effects of severe weather events and other natural conditions (e.g., hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, sea level rise), including the aggregate amounts and where in the financial statements they are presented:

- Incurred expenses and losses, excluding any recoveries, resulting from severe weather events and other natural conditions, if the amount equals or exceeds 1% of the absolute value of pre-tax income or loss (unless it is less than $100,000) for the relevant fiscal year.
- Capitalized costs and charges, excluding recoveries, resulting from severe weather events and other natural conditions, if the amount equals or exceeds 1% of the absolute value of stockholders' equity or deficit (unless it is less than $500,000) for the relevant fiscal year.
- Any recoveries recognized during the fiscal year as a result of severe weather events

and other natural conditions, if a registrant is required to provide disclosures on incurred expenses, capitalized costs and charges, and losses.

If carbon offsets or RECs are deemed a material component of the registrant's plans to achieve its disclosed climate-related targets, registrants will be required to disclose:

- The aggregate amounts, and where in the financial statements they are presented, of (1) carbon offsets and RECs expensed, (2) carbon offsets and RECs capitalized and (3) losses incurred on the capitalized carbon offsets and RECs during the fiscal year.
- The beginning and ending balances of the capitalized carbon offsets and RECs for the fiscal year.
- The registrant's accounting policy for carbon offsets and RECs.

Registrants are also required to disclose whether and how (1) exposures to risks and uncertainties associated with, or known impacts from, severe weather events and other natural conditions and (2) any disclosed climate-related targets or transition plans materially impacted the estimates and assumptions used in preparing the financial statements.

Finally, registrants will be required to disclose additional contextual information about the above disclosures, including how each financial statement effect was derived and the policy decisions made to calculate the effects, for the most recently completed fiscal year and, if previously disclosed or required to be disclosed, for the historical fiscal year(s) for which audited consolidated financial statements are included in the filing.

Registrants Subject to the Climate-Related Disclosure Rules and Affected Forms (pages 550–575)

The final rules apply to Exchange Act periodic reports and Securities Act and Exchange Act registration statements largely as proposed, with some modification.

The final rules require registrants that file their Exchange Act annual reports on Forms 10-K, as well as their Exchange Act and Securities Act registration statements on Form 10 and Form S-1, S-4 (except as provided below), or S-11, as applicable, to include the climate-related disclosures required by the final rules in these forms. Registrants may incorporate by reference the climate-related disclosures required by the final rules to the extent they are permitted to do so under Forms S-1, S-4, and S-11.

The final rules also require foreign private issuers that file their Exchange Act annual reports or registration statements on Form 20-F and their Securities Act registration statements on Form F-1 or Form F-4 (except as provided below) to provide the same climate-related disclosures as domestic registrants.

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. In another change from the proposed rules, the final rules will not require registrants to disclose any material change to the climate-related disclosures provided in a registration statement or annual report in its Form 10-Q or, in certain circumstances, Form 6-K for a registrant that is a foreign private issuer that does not report on domestic forms.

The final rules also will not apply to asset-backed securities issuers, as proposed. The Commission declined to exempt other registrants, such as BDCs, REITs, or issuers of

registered non-variable insurance contracts from the final rules, reasoning that "[a]s with operating companies, these entities may face material climate-related risks that would impact an investment or voting decision and will have only limited disclosure obligations to the extent climate-related risks are not material in a given case."

With respect to issuers of registered non-variable insurance contracts, if the final rules would otherwise apply solely as a result of a registrant's offerings of registered index-linked annuities, the final rules may not apply prior to required compliance.[5] To the extent such a registrant is subject to the final rules in connection with offerings of other types of registered non-variable insurance contracts, as noted above, to the extent a climate-related risk is not material to such registrants the information required to be disclosed would be limited. The final rules do not apply to Forms S-8 and 11-K.

Structured Data Requirement (pages 575–581)

The SEC adopted the structured data requirements as proposed, requiring all issuers that will be subject to the final rules to tag disclosures in Inline XBRL.

Treatment for Purposes of the Securities Act and the Exchange Act (pages 581–585)

As proposed, the climate-related disclosures provided pursuant to the final rules will be treated as filed. Climate-related disclosures will therefore be subject to potential liability pursuant to Exchange Act section 18 and, if included or otherwise incorporated by reference into a Securities Act registration statement, Securities Act section 11 as well.

Effective Date and Compliance (pages 585–592)

The final rules will become effective 60 days after publication in the Federal Register.[6] The SEC adopted delayed and staggered compliance dates for the final rules that vary according to the filing status of the registrant, outlined in the table below:

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Notes

[1] See The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11275; 34-99678; File No. S7-10-22 (Mar. 6, 2024) (Adopting Release), available at: https://www.sec.gov/files/rules/final/2024/33-11275.pdf.

[2] See, e.g., State of West Viriginia et al., Petition for Review, filed in the United States Court of Appeals for the Eleventh Circuit (Mar. 6, 2024), available at: https://ago.wv.gov/Documents/SEC%20Climate%20Disclosure%20Petition%20for%20Review.pdf; Liberty Energy Inc. and Nomad Proppant Services LLC, Petition for Review, filed in the United States Court of Appeals for the Fifth Circuit (Mar. 6, 2024), available at: https://boydengray.com/wp-content/uploads/2024/03/01-Petition.pdf; and State of Iowa et al., Petition for Review, filed in the United States Court of Appeals for the Eighth Circuit (Mar. 12, 2024), available at: https://www.iowaattorneygeneral.gov/media/cms/SEC_GHG_Petition_F5EB117DF84E7.pdf.

[3] For an overview of the proposed rules, see ICI's summary memo on SEC Proposal Requiring Public Companies to Provide Enhanced Climate-Related Disclosure (Mar. 24, 2022), available at https://www.ici.org/memo34086. ICI's comment letter on the proposal can be found at https://www.sec.gov/comments/s7-10-22/s71022-20131852-302300.pdf.

[4] The non-exclusive list includes: 1) 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; 2) the processes by which such positions or committees assess and manage climate-related risks; and 3) 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.

[5] The Adopting Release cites Division AA, Title I of the Consolidated Appropriations Act, 2023, Pub. L. 117-328; 136 Stat. 4459 (Dec. 29, 2022) and Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities ("RILA Act"), Release No. 33-11250 (Sept. 29, 2023) [17 FR 71088 (Oct. 13, 2023)]. It further notes that if the Commission adopts this proposal substantially as proposed, or insurers are able to register offerings of registered index-linked annuities on Form N-4 pursuant to a provision in the RILA Act, the registration statement for a registered-index linked annuity would not be required to include the information required by the final rules. The Adopting Release noted that the Commission anticipates that "in such circumstances insurance companies generally will rely on Exchange Act Rule 12h-7 if they would otherwise be subject to Exchange Act reporting obligations solely by reason of their offerings of registered index-linked annuities."

[6] As of the date of this memorandum, the final rules had not yet been published in the Federal Register.
