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Regulation: NY Governor Signs Moratorium on Crypto Mining Pending Environmental Review

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Regulation

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The Governor of New York, Kathy Hochul, has signed a **bill** establishing a two-year moratorium on new or renewal permits necessary to modify certain fossil fuel plants for cryptocurrency mining operations using proof-of-work (POW) authentication methods. This moratorium, which took effect immediately, is the first of its kind in the United States. It will only apply to fossil fuel power plants that house energy-intensive proof-of-work cryptocurrency mining operations and will not apply to individuals or companies that currently have valid permits. Mining operations that connect directly to the power grid or use renewable energy are not affected. Some miners, especially larger scale operations, bypassed the power grid and re-opened closed power plants in an attempt to produce lower cost electricity. The law, which was passed by the State Assembly in May and the State Senate in June, requires the Department of Environmental Conservation to study the environmental impact of POW crypto mining activities, including the amount of energy used and the carbon emissions produced. According to the **University of Cambridge**, global mining of Bitcoin, the largest of the cryptocurrencies, consumes more electricity than all residential lighting in the United States.

Hochul made the following statement: “As the first governor from Upstate New York in nearly a century, I recognize the importance of creating economic opportunity in communities that have been left behind” and “I will ensure that New York continues to be the center of financial innovation, while also taking important steps to prioritize the protection of our environment.” The Business Council of New York State responded to the announcement by stating: “To date, no other industry in the state has been sidelined like this for its energy usage. This is a dangerous precedent to set in determining who may or may not use power.”

Taking the Temperature: The moratorium’s impact likely will be limited given the relatively narrow focus of the law, but it builds on other New York legislative initiatives addressing climate change that, considered in the aggregate, could make New York a

state laboratory for efforts to balance climate change regulation with economic impact. The Climate Leadership and Community Protection Act, enacted in July 2019, requires New York to reduce greenhouse gas emissions 40% by 2030, and 85% by 2050, from 1990 levels, and establishes a Climate Action Council to develop recommendations to meet these targets. The Council consists of the heads of various state agencies as well as leaders of energy companies, environmental advocates, and academics. A bill titled "The Fashion Sustainability and Social Accountability Act" proposes to impose disclosure and sustainability regulations on global apparel and footwear companies with more than $100 million in revenue doing business in New York. The industry has long been a target of environmental activists. The World Economic Forum estimates that the fashion industry contributes up to 10% of worldwide carbon emissions and ranks second in global water consumption. As we have previously discussed in relation to the bill, if enacted, it would require subject companies to map at least 50% of their supply chain, publish environmental due diligence policies, disclose actual and potential negative environmental impacts and set impact reduction targets. And, in November 2021, the New York Department of Financial Services issued guidance for New York domestic insurers on managing the financial risks from climate change, which includes a laundry list of actions (that also have been offered as best practices or required by federal and foreign regulators) such as utilizing scenario analyses, ensuring adequate board-level expertise on climate change, incorporating climate into enterprise risk management and assessment, and providing accurate related disclosures. The insurance-focused guidance is similar to DFS guidance issued a year earlier to all New York-regulated financial institutions.

The key takeaway is that while relative to other states New York may be more active in the area of climate change regulation, it is not unique when considered in the context of national and global activity. Regardless of where they are incorporated or do business, companies should anticipate having to (if they are not already) address climate change from governance (risk and opportunity assessment, scenario analysis, emissions measurement, board expertise, etc.), disclosure, and regulatory perspectives.