

Appendix A

1. The following Form 20-F form check items are not new this year, but were recently added in the past two years and should therefore be confirmed for your upcoming filing:
 - (i) Confirm that Item 3.A states “[Item 3.A \[Reserved\]](#)” (instead of “Item 3.A Selected Financial Data” as may have been included in prior Form 20-Fs) due to the SEC’s elimination of the disclosure requirement for selected financial data in 2021.¹
 - (ii) Confirm “Item 10J: Annual Report to Security Holders.” Item 10J was added to Form 20-F in 2022. While the SEC has not released formal guidance on how to respond to Item 10J, including whether it needs to be included in Form 20-F, we believe that issuers should address it as follows:
 - If an issuer is not required under home country law to furnish, or does not otherwise furnish, to its security holders an annual report separate from the Form 20-F, then the issuer should write: “Not applicable.”
 - If an issuer is required under home country law to furnish, or otherwise furnishes, to its security holders an annual report separate from the Form 20-F, then it should write: “If we are required to provide an annual report to security holders in response to the requirements of Form 6-K, we will submit the annual report to security holders in electronic format in accordance with the EDGAR Filer Manual.”
 - (iii) Confirm the inclusion of “Item 16I” of the Form 20-F with the caption “Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.” New Item 16I was added to the Form 20-F in 2022 pursuant to the Holding Foreign Companies Accountable Act (HFCAA) (as explained in our prior alert) in order to identify any issuers that retain auditors that the PCAOB is unable to inspect completely. Given the SEC’s recent statement that “the PCAOB has been able to fulfill its oversight responsibilities as it relates to audit firms in China and Hong Kong,” this year, companies should not have any disclosure (beyond “Not applicable” or “None”) under this item in their upcoming Form 20-Fs.
 - (iv) As in the past, tag in inline XBRL the independent auditor’s: (i) name; (ii) location (*i.e.*, city and state, province or country); and (iii) PCAOB ID number.² Companies should coordinate this tagging with the financial printer.
 - (v) For companies with mining operations,³ consider whether expanded Regulation S-K 1300 requirements, which became mandatory for Form 20-Fs filed in 2022 for the fiscal year ended December 31, 2021, apply. If a company’s current mining operations, *in the aggregate*, are material to its business, Regulation S-K 1300 disclosures would be required in its Form 20-F.⁴ In addition, companies with property that is *individually* material to their business must obtain a technical report summary,⁵ which must be signed by a “qualified person” (as defined in Regulation S-K 1300) and filed as Exhibit 96.1 to the Form 20-F.⁶

¹ For more information, see “[Key Considerations for the 2022 Annual Reporting Season: Form 20-F and Other FPI-Specific Considerations: in 2022: Mandatory Compliance with SEC’s Amendments to Part I of Form 20-F, Item 3.A and Item 5Items 301, 302 and 303](#)” in our prior memo.

² This requirement is a result of the SEC’s December 2021 [amendments](#) implementing the HFCAA for all auditors that provide their opinions related to financial statements, in accordance with [Section 6.5.54 of the EDGAR Filing Manual](#). Practices vary as to the location of this tagging in annual reports, but a commonly used option is to tag the auditor’s name and PCAOB ID number in the Index to the Financial Statements and the auditor’s location at the end of the audit report.

³ The SEC’s comment letter practices indicate that this inquiry should be conducted both by companies that sell mineral extractions *and* vertically integrated companies that do not sell their mineral extractions but whose mining operations supply raw materials.

⁴ These disclosures include: (i) summary property disclosure on overall mining operations, mineral resources and mineral reserves; (ii) individual property disclosure for any property that is individually material to their business; and (iii) a description of the internal controls that the company uses in its exploration and mineral resource and reserve estimation efforts, including quality control/quality assurance programs, verification of analytical procedures, and a discussion of comprehensive risk inherent in the estimation.

⁵ The technical report summary must describe the information reviewed and conclusions reached by the qualified person about the company’s mineral resources and/or reserves on each material property (or, optionally, exploration results).

⁶ The technical report summary must be filed as Exhibit 96.1 to the Form 20-F the first time the company discloses mineral reserves or mineral resources in its Form 20-F. In addition, it must be filed as an exhibit in subsequent Form 20-Fs under either of the following circumstances: (i) there is a material change in the mineral reserves or mineral resources, as disclosed in the Form 20-F, from the last

See [Appendix B](#) for a summary of the Nasdaq diversity disclosure requirement, along with other key investor and proxy advisory firm policies on board diversity.

It is also important to keep track of the number of boards on which each of your directors sits, bearing in mind key investor and proxy advisory firm policies on overboarding, which tend to be country/region-specific.

See [Appendix C](#) for a discussion of over-boarding policies.

2. **Considerations for Outstanding Registration Statements:** Consider how the filing of the Form 20-F may impact any outstanding registration statements.

- All Effective Registration Statements:** Remember to update your auditor consent attached as an exhibit to the Form 20-F to include any newly filed registration statements and remove any registration statements that are no longer effective.
- Effective Shelf Form F-1s:**
 - **Post-Effective Amendment and Timing of Form 20-F:** You must file a post-effective amendment to the Form F-1 in order to incorporate the audited annual financial statements and other information from the Form 20-F into the Form F-1. If you plan to allow uninterrupted sales (e.g., by selling stockholders) off of that Form F-1, you must file and have the SEC declare effective this post-effective amendment by the end of the third month after your fiscal year end (for calendar-year-end FPIs, March 31, 2024). For the sake of efficiency, you may want to consider filing your Form 20-F before this three-month deadline (for calendar-year-end FPIs, March 31, 2024) and then immediately preparing and filing a post-effective amendment on Form F-1, all with enough time to ensure the SEC declares the post-amendment effective by the three-month deadline.
 - **Potential Form F-3 Eligibility:** You should also consider if you have become Form F-3 eligible, so that you can convert the Form F-1 into a Form F-3 and avoid future post-effective amendments for as long as you remain F-3 eligible.
- Effective Shelf Form F-3s:**
 - **Timing of Form 20-F:** You are not required to file a post-effective amendment with audited annual financial statements and can instead update the registration statement merely by filing the Form 20-F. However, if you plan to allow uninterrupted sales off of that Form F-3, you must file your audited annual financial statements by the last day of the third month after your fiscal year end (March 31, 2024, for calendar-year-end FPIs). You should consider filing the Form 20-F by the three-month deadline, ahead of the normal 120-day deadline for filing an annual report on Form 20-F, or, if your Form 20-F is not ready by such date, filing by such deadline a current report on Form 6-K with the audited financial statements (incorporated by reference into the Form F-3).
 - **Form F-3 Eligibility:** You should also ensure that you continue to meet the eligibility requirements for using the Form F-3 when filing your Form 20-F: (i) if you previously filed as a well-known seasoned issuer (WKSI), confirm that you are still a WKSI in order to use that registration statement (otherwise, it will need to be re-filed (if eligible) as a non-WKSI shelf); or (ii) if you previously filed a non-WKSI shelf registration statement, confirm that you still meet the requirements to use that registration statement. Otherwise, you will need to re-file as a Form F-1.

While it does not affect the Form 20-F, all FPIs with outstanding registration statements should also bear in mind the requirement to file a Form 6-K by the date that is nine months after the end of their fiscal year, including six-months consolidated interim financial statements (which may be unaudited), containing

technical report summary filed for the property; or (ii) the company has previously filed a technical report summary supporting the disclosure of exploration results and there is a material change in the exploration results from the last technical report summary filed for the property.

explanatory notes.⁷ This Form 6-K should be incorporated by reference into any effective Form F-3s and would trigger a prospectus supplement for any effective Form F-1.

3. **D&O Questionnaires.** Ahead of your Form 20-F filing, review and update your D&O questionnaires, which provide backup and support for the disclosures to be included in your Form 20-F. In particular:
- (i) If you are a Nasdaq-listed company subject to the board diversity requirements or otherwise plan to voluntarily disclose the diversity of your directors, remember to include, as in the past, a question to elicit information on your directors' diversity characteristics that covers the potential diversity categories that you may want to disclose (under Nasdaq and/or investor policies) and to obtain their consent to disclose this information;
 - (ii) Consider adding a question to elicit information from directors on their expertise with respect to ESG, human capital, cybersecurity and/or AI in light of both SEC and investor focus on board qualifications in these areas;
 - (iii) Consider adding or refining questions on outside directorships or officerships to identify any potential antitrust concerns, given Department of Justice [focus on potential violations of Section 8 of the Clayton Act](#); and
 - (iv) Consider building out (or adding) Iran-related activities questions to cover potentially problematic transactions with Russian entities.⁸

⁷ This is based on the following requirement from Item 8.A.5 of Form 20-F, as follows: "The interim financial statements should include a balance sheet, statement of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income), cash flow statement, and a statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners, or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity). Each of these statements may be in condensed form as long as it contains the major line items from the latest audited financial statements and includes the major components of assets, liabilities and equity (in the case of the balance sheet); income and expenses (in the case of the statement of comprehensive income) and the major subtotals of cash flows (in the case of the cash flow statement). The interim financial statements should include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year end balance sheet. If not included in the primary financial statements, a note should be provided analyzing the changes in each caption of shareholders' equity presented in the balance sheet. The interim financial statements should include selected note disclosures that will provide an explanation of events and changes that are significant to an understanding of the changes in financial position and performance of the enterprise since the last annual reporting date. If, at the date of the document, the company has published interim financial information that covers a more current period than those otherwise required by this standard, the more current interim financial information must be included in the document. Companies are encouraged, but not required, to have any interim financial statements in the document reviewed by an independent auditor. If such a review has been performed and is referred to in the document, a copy of the auditor's interim review report must be provided in the document."

⁸ Since February 2022, the US has imposed sweeping sanctions on Russia, bringing a number of high-net-worth individuals and companies with substantial investments in the US within scope of the of the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA). Companies should undertake diligence to determine whether any sanctioned individuals or entities may be involved in their activities to assess compliance and potential disclosure requirements, as the ITRA requires Form 10-K and Form 10-Q disclosure if the company (or any affiliate) knowingly engaged in certain sanctionable activities.

Appendix B

Board Diversity Policies

Gender and Racial/Ethnic Diversity Policies of Proxy Advisory Firms:

FPIs in US Tax Havens

ISS's updated policy for FPIs in US tax havens in the Russell 3000 or S&P 1500 indices requires at least one female director (see Americas policies [here](#)).

Israeli FPIs

- **ISS:** ISS does not have specific policies on gender and racial/ethnic diversity for Israeli companies. See [here](#) for its policies for Israeli companies.
- **Glass Lewis:**
 - *Gender Diversity:* Glass Lewis defaults to US requirements, and as such, will generally recommend voting against the nominating committee chair of a board that has fewer than two female directors, except for boards of six or fewer total directors. See [here](#) for Glass Lewis's policies on Israeli companies.
 - *Racial/Ethnic Diversity:* Glass Lewis encourages ethnic/racial diversity, and specifically notes the relatively low percentage of Israeli Arabs serving on boards but will not make a voting recommendation on it except in a contested election. Glass Lewis states that it "believes that the composition of a board should be representative of a company's workforce, the jurisdictions in which it principally conducts its business activities, and its other key stakeholders" and that Israeli FPIs "should consider including diversity of ethnicity and/or national origin as attributes in their composition profiles, whether defined targets for diversity of ethnicity and national origin should be set, and the manner and extent to which the ethnic and national backgrounds of directors and board nominees is publicly disclosed."

FPIs in Other Countries

- ISS and Glass Lewis policies on board diversity are region and/or country specific. For the currently applicable policies, see [ISS's current voting policies](#) and [Glass Lewis's current voting policies](#).

Diversity Policies of Institutional Investors and Nasdaq:

- **BlackRock:** BlackRock maintains region/country-specific market guidelines. BlackRock notes that, "to ensure there is appropriate diversity of perspectives, we look to boards to be representative of the company's key stakeholders, with an approach to diversity that is aligned with any market-level standards or initiatives designed to support diversity (particularly gender and ethnic diversity) among board members." BlackRock also notes its "general view" that, subject to market-specific standards, it is looking for "all boards to be taking steps towards at least 30 percent of their members being comprised of the under-represented gender (which should be read in conjunction with applicable country-specific guidelines)." BlackRock asks companies, consistent with local law, "to provide sufficient information on each director/candidate and in aggregate so that shareholders can understand how diversity (covering professional characteristics, such as a director's industry experience, specialist areas of expertise, and geographic location; as well as demographic characteristics such as gender, ethnicity, and age) has been accounted for within the proposed board composition. These disclosures should cover how diversity has been accounted for in the appointment of members to key leadership roles, such as board chair, senior/lead independent director and committee chairs."⁹ Below are the market standards for specific countries:
 - *FPIs in Israel:* While BlackRock is looking for companies in this region to make progress towards having greater female representation at board level in line with its general guidelines, BlackRock is

⁹ See [BlackRock Investment Stewardship Proxy voting guidelines for European, Middle Eastern, and African securities](#).

- likely to take voting action if the board has failed to appoint at least directors from the underrepresented gender. See BlackRock's Israel-specific voting guidelines [here](#).
- *FPIs in Other Countries*: See BlackRock's region-specific voting guidelines [here](#).
 - **State Street**: State Street's published guidelines state that it expects boards of companies in all markets and indices to have at least one female board member. It may waive the policy if a company engages with State Street and provides a specific, timebound plan for adding at least one woman to the board. State Street also expects companies in the Russell 3000, TSX, FTSE 350, STOXX 600 and ASX 300 indices to have boards comprised of at least 30 percent women directors. State Street may waive the policy if a company engages with SSGA and provides a specific, time-bound plan for reaching 30 percent representation of women directors. If a company fails to meet any of these expectations outlined above, State Street may vote against the Chair of the Nominating Committee or the board leader in the absence of a Nominating Committee, if necessary. Additionally, if a company fails to meet this expectation for three consecutive years, State Street may vote against all incumbent members of the Nominating Committee, or those persons deemed responsible for the nomination process. See State Street's [Guidance on Expanding Board Gender Diversity](#).
 - **Nasdaq's Diversity Disclosure Rule**: Starting December 31, 2023, Nasdaq's listing rule requires most Nasdaq-listed companies to have, or explain why they do not have, at least one diverse director, and in 2025, to have, or explain why they do not have, at least two diverse directors. For FPIs, this includes one director who self-identifies as female and one who self-identifies as one or more of the following: female; LGBTQ+; or an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the country of the Company's principal executive offices. In addition, beginning in 2022, the listing rules required all Nasdaq-listed companies to publicly disclose board diversity data using a standardized disclosure matrix template. A company may include this in its annual meeting proxy statement furnished on Form 6-K, in its Form 20-F or on its website. The most logical place appears to be the annual proxy statement on Form 6-K, especially if relevant to investors, or otherwise, the website. Specific requirements, including the posting of a Nasdaq notice, must be satisfied if the company places its matrix on the website.¹⁰ Nasdaq rules specify that, starting in 2023, the matrix disclosure should include both the current and prior year statistics; however, Nasdaq has issued an FAQ that functionally removes this requirement by allowing only one year if the prior year remains publicly available (*i.e.*, in a proxy statement, Form 20-F or on the company's website).

Below are two alternatives for presenting the board diversity matrix. A company should not include additional categories within the matrix or include a different format other than one of these two alternatives. However, a company may supplement its disclosure by providing additional information related to its directors below the matrix (*e.g.*, directors with disabilities, directors with veteran status, Middle Eastern directors,¹¹ etc.), in a narrative that accompanies the matrix or in a separate graphic.

¹⁰ If posting the matrix on its website, a company must: (i) label the disclosure and decide where to post it on the company website. The disclosure should be clearly labeled as "Board Diversity Matrix" on the company's website. It can be posted anywhere on the website, but Nasdaq recommends posting it on the Investor Relations web page or other web page where governance documents are posted; and (ii) inform Nasdaq of posting. Within one business day after posting, companies must complete Section 10 (Board Diversity Disclosure) of the Company Event Form on the Nasdaq listing center, which requires the company to provide the disclosure date and URL location of its matrix. For additional information, see Nasdaq's [Website Disclosure of Board Diversity Matrix Info Sheet](#).

¹¹ Certain companies may want to include additional ethnic or racial categories below or otherwise outside of the matrix to display this diversity to proxy advisers. In cases where it applies US, rather than regional, voting standards to FPIs, ISS considers racial and ethnic diversity to be broader than Nasdaq.

Alternative 1

Board Diversity Matrix (As of [DATE])

Total Number of Directors	#			
	Female	Male	Non-Binary	Did Not Disclose Gender
Part I: Gender Identity				
Directors	#	#	#	#
Part II: Demographic Background				
African American or Black	#	#	#	#
Alaskan Native or Native American	#	#	#	#
Asian	#	#	#	#
Hispanic or Latinx	#	#	#	#
Native Hawaiian or Pacific Islander	#	#	#	#
White	#	#	#	#
Two or More Races or Ethnicities	#	#	#	#
LGBTQ+			#	
Did Not Disclose Demographic Background			#	

Alternative 2

Board Diversity Matrix (As of [DATE])

Country of Principal Executive Offices	[Insert Country Name]			
Foreign Private Issuer	Yes/No			
Disclosure Prohibited under Home Country Law	Yes/No			
Total Number of Directors	#			
	Female	Male	Non-Binary	Did Not Disclose Gender
Part I: Gender Identity				
Directors	#	#	#	#
Part II: Demographic Background				
Underrepresented Individual in Home Country Jurisdiction			#	
LGBTQ+			#	
Did Not Disclose Demographic Background			#	

Appendix C

Director Overboarding Policies

While most stakeholders support limits on the number of outside directorships a director can hold, the overboarding policies of proxy advisory firms and institutional investors are generally country or region-specific and therefore companies are advised to carefully consider the specific policies of the relevant firms when considering whether their directors may be considered “overboarded.” See the country-specific policies of [ISS](#) and [Glass Lewis](#). In addition, the general policies of major institutional investors are discussed below:

- **BlackRock:** “As the role of director is increasingly demanding, directors must be able to commit an appropriate amount of time to board and committee matters. Given the nature of the role, it is important a director has flexibility for unforeseen events, and therefore only takes on the maximum number of non-executive mandates that provides this flexibility. BlackRock is especially concerned that where a full-time executive has a non-executive director role or roles at unrelated companies, there may be a risk that the ability to contribute in either role could be compromised in the event of unforeseen circumstances. Companies should disclose board and committees’ attendance to enable shareholders to monitor directors’ availability. However, in BlackRock’s experience, the test of an over-committed director is not just their attendance record but also includes an assessment of a director’s ability to provide appropriate time to meet all responsibilities when one of the companies starts facing exceptional circumstances.”

For companies in EMEA, “BlackRock will ordinarily consider there to be a significant risk that a board candidate has insufficient capacity, and therefore consider voting against his/her (re)election, where the candidate would (if elected) be: (i) serving as a non-executive director (but not the board chair) on **more than four** public company boards; (ii) serving as a non-executive board chair and as a non-executive director (but not the board chair) on **more than two** other public company boards; (iii) serving as a non-executive board chair on **two** public company boards and as a non-executive director on **one or more** other public company boards; or (iv) serving as a non-executive director (but not the board chair) on more than one public company board while also serving as an executive officer at a public company. In case of an executive officer, we would vote against his/her (re)election only to boards where he/she serves as a non-executive director.”¹²

- **State Street:** State Street implements the following voting guidelines, in addition to its existing guidelines regarding director time commitment:¹³ State Street may take voting action against directors who hold excessive commitments according to either of the following conditions: (i) named executive officers (NEOs) who sit on **more than two** public company boards; (ii) non-executive board chairs or lead independent directors who sit on **more than three** public company boards; or (iii) director nominees who sit on **more than four** public company boards.¹⁴ State Street may consider waiving its policy and voting in support of a director (other than an NEO) if the company discloses its director commitment policy in a publicly available manner (e.g., corporate governance guidelines, proxy statement, company website). This policy or associated disclosure must include: (i) a numerical limit on public company board seats a director can serve on (this limit cannot exceed State Street’s policy by more than one seat); (ii) consideration of public company board leadership positions (e.g., committee chair); (iii) affirmation that all directors are currently compliant with the company policy; and (iv) description of an annual policy review process undertaken by the Nominating Committee to evaluate outside director time commitments.¹⁵
- **Vanguard:** “Directors’ responsibilities are complex and time-consuming. As a result, a director may be considered ‘overboarded’ when the number of director positions they have accepted makes it challenging to dedicate the requisite time and attention to effectively fulfill their responsibilities at each company. While no two boards are identical and time commitments may vary, the funds believe the limitations below are

¹² See [BlackRock Responsible Investment Guidelines EMEA](#).

¹³ For example, see State Street’s [proxy voting guidelines for European companies](#) and its [proxy voting guidelines for US and Canadian companies](#).

¹⁴ Service on mutual fund boards and UK investment trusts is not considered when evaluating directors for excessive commitments.

¹⁵ See [SSGA’s Managing Through a Historic Transition: The Board’s Oversight of Director Time Commitments](#).

appropriate absent compelling evidence to the contrary. The funds will take into account the scope of external commitments when evaluating a director's capacity on a case-by-case basis. A fund will generally vote against: (i) any director who holds an executive role of any public company and serves on **two or more additional outside** public company boards; and (ii) any director who serves on **more than four** public company boards. In certain instances, will consider voting for a director who would otherwise be considered overboarded if: (i) the director has committed to stepping down from a/the directorship(s) necessary to fall within the thresholds listed above by the following year's annual general meeting; (ii) the director becomes overboarded as a result of becoming an interim executive officer or has become an executive officer within the last 12 months; and/or (iii) the company provides specific, verifiable information confirming that (a) the director devotes significantly less than an average amount of time to one or more of the boards on which they sit and (b) that the reduced workload is appropriate based on the nature of the company's board (e.g., the company's business model or governance structure) and the relevant director continues to fulfill their obligations to that company, irrespective of their diminished hours of service."

Israeli FPIs

- **ISS:** Under extraordinary circumstances, will vote against individual directors, members of a committee, or the entire board, due to "[e]gregious actions related to a director's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company."
- **Glass Lewis:** Generally recommend against a director who: (i) serves as an executive officer of a public company while serving on **more than one additional** public company board, (ii) serves as an executive chair/vice chair of a public company while serving on **more than two additional** external public company boards; and (iii) any other director who serves on **more than five** public company boards. However, Glass Lewis also takes the following into consideration:
 - When determining whether a director's service on an excessive number of boards may limit the ability of the director to devote sufficient time to board duties, may consider relevant factors, such as the size and location of the other companies where the director serves on the board, the director's board roles at the companies in question, whether the director serves on the board of any large privately-held companies, the director's tenure on the boards in question, and the director's attendance record at all companies and the director's attendance record at all companies.
 - May not recommend that shareholders vote against overcommitted directors at the companies where they serve an executive function.
 - Will generally refrain from recommending against a director who serves on an excessive number of boards within a consolidated group of companies or a director that represents a firm whose sole purpose is to manage a portfolio of investments which include the company.
 - May refrain from recommending against the director if the company provides a sufficiently compelling explanation regarding his or her significant position on the board, specialized knowledge of the company's industry, strategic role (such as adding expertise in regional markets or other countries), etc.¹⁶

¹⁶ See [Glass Lewis's Israel Voting Guidelines](#).