Client Alert | US Public Company Advisory / Capital Markets

Key considerations for the 2026 annual reporting and proxy season: your upcoming Form 20-F and other FPI-specific considerations

By the White & Case Public Company Advisory Group

This memorandum outlines key considerations from White & Case's Public Company Advisory Group for foreign private issuers ("FPIs'") during the 2026 annual reporting season, divided into two sections: Form 20-F art I: Top housekeeping considerations in Part I below, and Disclosure Considerations in Part II below.

Following the inauguration of the second Trump administration in January 2025, the SEC has undergone a significant shift in priorities, and Congress has made a substantial change to the reporting framework for FPIs.

- **Climate Change Rule Proposal Abandoned by SEC:** The SEC decided in March 2025 to end its defense of the recently adopted and highly prescriptive climate change disclosure rules that were challenged in court, placing the focus for climate disclosure on the SEC's 2010 guidance and a principles-based securities law analysis of whether climate change disclosure is material for each registrant.
- **Rulemaking Initiatives:** Rulemaking initiatives on the SEC's agenda and other areas of SEC interest for possible rulemaking, including consideration of potential rule proposals to address:[1]
    - *Enhancement of Emerging Growth Company (EGC) Accommodations and Simplification of Filer Status for Reporting Companies.* The SEC is considering proposed rule amendments to expand accommodations that are available to EGCs and "to rationalize filer statuses," "simplify the categorization of registrants and reduce their compliance burdens."[2] This could include accommodations to align and/or expand exemptions available for EGCs, smaller reporting companies and non-accelerated filers.
    - *Reconsidering Foreign Private Issuer Eligibility*: The SEC issued a concept release and solicited public comment on the definition of FPI under the federal securities laws, seeking input on several possible approaches to amending the FPI definition.[3] This could potentially be an important change for foreign companies, as FPI status provides companies with significant accommodations and exemptions from SEC disclosure and filing requirements. White & Case submitted a comment letter to the SEC to provide input on these questions.
- **Section 16 Application to FPIs:** In a significant shift for FPI status, President Trump signed legislation extending the application of insider reporting obligations under Section 16(a) of the Exchange Act to directors and officers of FPIs. For the immediate impact this will have on Form 20-F disclosures, see "Reassess beneficial ownership disclosure of insiders" and "Reassess the compensation disclosures for

1 These initiatives are consistent with disclosure simplification efforts promoted by Chair Paul S. Atkins, who has stated that "we must simplify and scale the SEC's disclosure requirements" in order to "make them more comprehensible."

2 For recommendations in this regard, see: Society for Corporate Governance Submits Recommendations to SEC on Scaled Disclosure and Filer Category Reforms for Small- and Mid-Cap Companies.

3 These potential amendments included: (i) adding a foreign trading volume requirement; (ii) adding a major foreign exchange listing requirement; (iii) incorporating an SEC assessment of foreign regulations applicable to an FPI; (iv) establishing new mutual recognition systems; and (iv) adding an international cooperation arrangement requirement that the FPI be incorporated or headquartered in a jurisdiction that is a signatory to such a qualifying agreement.

insiders" below. For more information on complying more generally with Section 16, see "Prepare for Section 16 compliance" below for details.

With this shift in the backdrop, public companies are largely now focused on their obligations during the current reporting cycle under the existing disclosure regime. The business environment presents additional complexities, including emerging challenges and opportunities in artificial intelligence (AI), economic uncertainty and geopolitical developments. These trends have resulted in a wide range of changes confronting public companies, such as the adoption of cost efficiency measures and workforce reductions, while capitalizing on new growth opportunities in AI, as further discussed in our Disclosure Considerations in Part II below. Companies should critically evaluate their annual report disclosures in these veins, focusing also on materiality assessments, compliance with classic SEC areas of focus such as non-GAAP disclosures and internal consistency across all documents publicly released by public companies, including earnings releases and investor presentations.

Part I: Top housekeeping considerations

As in our prior annual alerts, we begin with our top housekeeping reminders for preparing Annual Reports on Form 20-F this year, as follows:

1. **20-F exhibits:**

   - *Confirm any appropriate updates to your insider trading policy and file the Company's insider trading policy as Exhibit 11 to the Form 20-F.* This is the second year that insider trading policies must be filed as Exhibit 11 to Form 20-Fs, pursuant to recent SEC rule amendments.[4] All FPIs, including EGCs, must comply with this requirement.[5] Ahead of the filing this year, companies should review their insider trading policies and consider whether any updates or changes should be made. For insights on key policy provisions including standard blackout periods, see our second annual survey of insider trading policies.[6] In addition to this exhibit requirement, companies are required to disclose whether they have adopted an insider trading policy[7] and to tag this disclosure in inline XBRL.[8]

   - *Beyond the Insider Trading Policy exhibit*: Remember to review your entire 20-F exhibit list, including the following: (1) confirm that all required exhibits are included in accordance with Item 19 of Form 20-F, including: (i) required exhibits filed since last year's Form 20-F on Form 6-K (to the extent required to be filed on Form 20-F), (ii) the required clawback policy under Instruction 97 to Item 19 of Form 20-F,[9] (iii) the consent of the auditors to incorporate the financial statements from the Form 20-F into the company's current registration statements, which must be updated to include any newly filed registration statements and should remove any registration statements that are no longer effective; (2) remove outdated exhibits no longer required to be filed, such as material contracts that have been fully performed; and (3) confirm

[4] Under Release Nos. 33-11138; 34-96492, Insider Trading Arrangements and Related Disclosures, the requirement began for 20-Fs covering a full fiscal period on or after April 1, 2023, meaning the Form 20-F for the 2024 fiscal year filed in 2025. *See also*, the Small Entity Compliance Guide and C&DIs 120.26-120.28.

[5] *See* Item 16J of Form 20-F. If a company's insider trading policies are contained in a code of ethics compliant with Item 16B of Form 20-F and the code of ethics is filed as an exhibit, a hyperlink to that exhibit accompanying the company's disclosure as to whether it has insider trading policies and procedures will satisfy this requirement.

[6] For example, 36 out of the 50 companies surveyed (or 72%) impose a specified quarterly blackout period, or a set period each quarter when all or certain insiders are prohibited from trading in the company's stock given their access to MNPI about the results of the fiscal quarter. This was a shift from our survey in 2024, where all of the policies surveyed specified a quarterly blackout period. The companies in 2025 that did not impose a specified quarterly blackout period in their insider trading policies were mainly in the biotechnology and pharmaceuticals sectors (as opposed to other industries, including energy, utilities, manufacturing and financial services).

[7] *See* Item 16J(a) of Form 20-F. A straightforward example of this disclosure is the following: "Policy Prohibiting Insider Trading and Related Procedures. We have adopted an insider trading policy governing the purchase, sale, and other dispositions of the registrant's securities by directors, senior management, and employees. A copy of the insider trading policy is filed as an exhibit to this Annual Report."

[8] *See* Item 16J(c) of Form 20-F.

[9] For the Form 20-F exhibit list, companies can use a description aligned with Instruction 97 to Item 19 of Form 20-F, "Policy relating to recovery of erroneously awarded compensation, as required by applicable listing standards adopted pursuant to 17 CFR 240.10D-1."

any permissible redactions and omissions in filed exhibits under Item 19 of Form 20-F – *(1) Personal Privacy; (2) Schedules or Similar Attachments; and (3) Confidential Business Information* – as explained in our 2023 Annual Memo's "*Exhibit Index Reminders*." For schedules, companies are reminded that, in general, they may omit schedules from exhibits under Item 19 of Form 20-F and need not include a related footnote in the exhibit index, provided that the schedules do not contain material information, among other requirements.[10]

2. **Confirm your filing status for 2026.** It is important to confirm your filing status in order to appropriately complete the checkboxes on your Form 20-F cover page. For an FPI, filing status will also impact (i) to the extent applicable, whether it continues to qualify as an EGC (i.e., until the first fiscal year where an issuer becomes a "large accelerated filer"), and (ii) whether it is subject to SOX 404(b) auditor attestation requirements (which apply once an issuer becomes an "accelerated filer" or a "large accelerated filer").

   Filing status does not affect the Form 20-F filing deadline for FPIs. This year's Form 20-F is due on **April 30, 2026**, for all calendar year-end FPIs, regardless of filing status. However, where a calendar year-end FPI has an effective shelf registration statement on Form F-1 or F-3 (e.g., for resales by selling shareholders) and plans to allow uninterrupted sales of securities from its registration statement, SEC rules require that the company file its audited FYE 2025 financial statements by March 31, 2026, which may push up the Form 20-F deadline to such earlier deadline. For more information, see "2. Considerations for Outstanding Registration Statements" in **Appendix A**.

   To confirm your filing status, keep in mind that:

   - *Determining Public Float*: Public float is central to calculating your filing status and is computed as of the last business day of the company's most recently completed second fiscal quarter (June 30, 2025, for calendar year end companies) by multiplying (a) the number of shares of common stock on that day *held by non-affiliates*[11] by (b) the closing stock price on that day. As a result, confirming the identity and holdings of affiliates and subtracting out their shares is critical for an accurate calculation of "public float."
   - *Large Accelerated, Accelerated and Non-Accelerated Thresholds*: The public float thresholds for initial qualifications are set forth in Rule 12b-2 of the Securities Exchange Act of 1934 (the "Exchange Act"), but if your company previously qualified as a "large accelerated filer" or an "accelerated filer," the thresholds to now move into accelerated or non-accelerated status are lower than those required for the initial qualification (e.g., less than $560 million as opposed to $700 million for accelerated filer status, less than $60 million as opposed to $75 million for non-accelerated filer status).[12]
   - *Emerging Growth Company (EGC) Status Check*. If your company is an EGC, remember to annually assess whether you have ceased to qualify as an EGC based on: (1) having total annual gross revenues of $1.235 billion or more, (2) the passage of time beyond the fifth anniversary of the first date common equity was sold pursuant to an effective registration statement, (3) the issuance of more than $1 billion in non-convertible debt in the previous three years, or (4) becoming a large accelerated filer. See the definition of "emerging growth company" in Rule 12b-2.

10 See "Instructions as to Exhibits" in Item 19 of Form 20-F.

11 "Holdings" only includes shares of common stock that are outstanding. Thus, "holdings" excludes shares of common stock that have not yet been issued but are still considered "beneficially owned" under Rule 13d-3 insofar as they can be acquired within 60 days (e.g., shares underlying exercisable options). The term "affiliate" is defined under Rule 12b-2 of the Exchange Act as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." An individual or entity's status as an "affiliate" is a fact-specific inquiry which must be determined by considering all relevant facts and circumstances; however, the SEC has indicated that status as an officer, director or 10 percent stockholder is one fact which must be taken into consideration in such inquiry. *See* American-Standard, SEC No-Action Letter (October 11, 1972).

12 *See* Rule 12b-2 of the Exchange Act for the definitions of "large accelerated filer" and "accelerated filer" and the SEC's helpful guides for determining filing status. Each issuer should run this calculation as facts and circumstances vary depending on prior qualifications. For example, if a company had previously been a large, accelerated filer, the subsequent qualification thresholds to become an accelerated filer are less than $560 million but $60 million or more, or to become a non-accelerated filer, less than $60 million, in each case, in public float. An FPI filing on Form 20-F may not qualify as a smaller reporting company.

Outstanding Share Data: Companies should also confirm that their outstanding share data is used and presented consistently throughout their Form 20-F. In September 2023, the SEC published a sample comment letter to companies regarding their XBRL disclosures, which included a sample comment that "the common shares outstanding reported on the cover page and on your balance sheet are tagged with materially different values. It appears that you present the same data using different scales (presenting the whole amount in one instance and the same amount in thousands in the second)."

3. **Clawback checkboxes:** As a reminder, due to the requirement to adopt a clawback policy and make related disclosures pursuant to SEC and stock exchange rules, the cover page of the Form 20-F now includes two clawback checkboxes: The first of these "clawback" checkboxes must be marked if the Form 20-F filing reflects the "*correction of an error to previously issued financial statements*," and the second "clawback" checkbox must be marked if an error correction resulted in a financial statement that "*required a recovery analysis of incentive-based compensation*." Beyond the cover page checkboxes, clawback disclosure is also required under new Item 6.F of Form 20-F if your company was required to prepare an accounting restatement that required a clawback (or if there is an outstanding balance of unrecovered compensation related to a prior restatement).[13]

   On April 11, 2025, the SEC issued six new compliance and disclosure interpretations (C&DIs) addressing the clawback checkboxes on the cover page (these C&DIs align with White & Case guidance in our 2024 Annual Memo). Among other items, the SEC's April 2025 C&DIs confirm that:

   - *Under C&DI 104.20.* The first clawback checkbox must be marked if the filing reflects a change to previously issued financial statements that represents the "correction of an error" under GAAP, which includes "Big R" restatements and "little r" restatements. On the other hand, "out-of-period adjustments" (i.e., the correction of an immaterial prior period error that is recorded in the current year) do <u>not</u> require Checkbox #1 to be marked, since previously issued financial statements are not being revised in such situations.
   - *Under C&DI 104.21.* The second clawback checkbox must be marked if a big "R" or little "r" restatement "required a recovery analysis" – even when, after applying the clawback recovery policy, a company determines that no recovery of erroneously awarded compensation is required. This would include circumstances when (1) no incentive-based compensation was received by any executive officers during the relevant time frame or (2) incentive-based compensation was received but was not based on a financial reporting measure impacted by the restatement. In addition, the company must briefly explain why application of its recovery policy resulted in no recovery.

As further described below, an additional four clawback C&DIs provide clarifications on the applicable years and filings when checkboxes are (or are <u>not</u>) required to be checked (*see* C&DIs 104.22 through 104.24), as well as considerations for interim period restatements (*see* C&DI 104.25).[14]

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13 Under Item 6.F, companies are also required to disclose if there was an outstanding balance of unrecovered excess incentive-based compensation relating to a prior restatement.

14 These three additional C&DIs address the following (which are understood also to apply to Form 20-F):

- **Checkboxes Not Required to be Checked in Second Year (But Item 402(w) Disclosure May Be Required) (Questions 104.22 and 104.23)**: After filing an amended 20X3 10-K where both boxes were checked, an issuer includes the same restated financial statements in its subsequent 20X4 annual report. Assuming there are no additional restatements, the Staff will not object to the check boxes remaining unmarked on the cover page of the 20X4 annual report. However, the proxy or information statement filed during 20X5 that includes 20X4 executive compensation information pursuant to Item 402 must include the disclosure of Item 402(w)(2) of Regulation S-K. The Commission has stated that this information is similar to other executive compensation information required by Item 402 and is likely to serve a similar purpose for investors in evaluating the issuer and making voting decisions. This disclosure is required even if the company included in the amended 20X3 annual report information explaining why application of its recovery policy resulted in no recovery and also when the company already provided such disclosure in the annual report.
- **Checkboxes Required to be Checked in Form 10-K Even if Restatement Previously Disclosed in Another Filing (Question 104.24)**: If a company initially reports a restatement of an annual period in a form other than Form 10-K such as in a Form 8-K or a registration statement, it still must check the boxes on the cover page of the first Form 10-K that is filed which includes the restated annual period.

4. **D&O questionnaire considerations:** Although there are no required changes this year, companies may want to consider expanding the director skills sections of their D&O Questionnaires to collect information sufficient to assess expertise in cybersecurity and AI, reflecting the growing need for technological fluency at the board level. In addition, companies may consider reassessing questions designed to elicit information on directors' diversity characteristics, given that Nasdaq diversity rules were overturned and proxy advisory firm and investor policies have largely removed director diversity requirements (See **Appendix B** for a summary of applicable policies; *also see* the section entitled "*Reassess Human Capital Management and Diversity, Equity and Inclusion (DEI) Disclosures*" below).[15]

Appendix A of this client alert provides additional housekeeping reminders, including (1) additional D&O questionnaire considerations, and (2) considerations for outstanding registration statements.

Part II: Key disclosure considerations

1. **Consider artificial intelligence for 20-F risk factors and business sections, to the extent material.** New AI technologies present both significant opportunities and risks for companies, and disclosure on AI has become a significant disclosure trend. Among the Fortune 100 U.S. domestic issuers, more than 85% addressed AI in their risk factors last year (up from over 65% in the prior year), and over one-third of the Fortune 100 (or 36%) disclosed AI in a standalone Form 10-K risk factor (up from 14% in the prior year).[16] To date, AI risk factor disclosures have generally focused on, among other items, risks arising from current and evolving AI regulations; AI-specific cybersecurity exposures; risks that AI systems may fail, under-perform, or disrupt business operations if they produce incorrect or unreliable outputs; and competitive pressures if other market participants deploy AI more effectively.

   In addition to risk factor disclosures on AI,[17] companies should consider any appropriate disclosures about the ways in which AI has materially impacted (or may in the future impact) their business, including their business strategy, capital expenditures, productivity and efficiency, competitive position, workforce and/or customer demand for products, which, depending on the nature of the issuer's business and its particular facts and circumstances, might be included in the "Business" section (Item 4 of Form 20-F) or trend disclosure in the MD&A (Item 5.D of Form 20-F).

   To the extent the potential impact of AI is in fact discussed, it is important not to "AI" wash, or mislead investors as to your true artificial intelligence capabilities. In light of the recent SEC focus on this issue, companies should be cautious not to overstate the benefits of AI for their businesses and assess whether any of their claims about their reliance on AI could be construed as misleading. In April 2025, the SEC filed an action against the founder

- **Checkboxes Not Required to be Checked for Interim Financial Statement Restatements (But Item 402(w) Disclosure Is Required) (Question 104.25)**: If a company determines that it is required to prepare restatements of its prior quarterly periods, it is not required to mark any of the check boxes on the cover page of its annual report because the restatements do not impact the annual periods in the filing. However, it must still provide Item 402(w) disclosure because, for purposes of that disclosure, an accounting restatement is not limited to restatements that only impact annual periods.

15 To this end, companies may consider whether to maintain, revise or remove such language in light of these developments, their Board preferences and investor policies, but to the extent companies continue to disclose diversity characteristics, the questionnaire should continue to confirm and obtain consent to disclose such information. *See* C&DI Question 116.11 available at: SEC.gov | Regulation S-K.

16 *See* EY report, "Cyber and AI Oversight Disclosures: What Companies Shared in 2025", (October 2025). Also *see* Deloitte report, "Disclosure Trends From the 2024 Reporting Season", (April 2025), which reports that approximately 84% of Fortune 500 companies discussed AI in their most recent Form 10-Ks, with 42% of such disclosures appearing in the business section, 95% in the risk factor section and 25% in MD&A.

17 For information on addressing AI in risk factors, see our alert, Key Considerations for Updating Annual Report Risk Factors in 2026.

and former CEO of a mobile shopping application company alleging that he made false and misleading statements to investors about the company's purported AI technology.[18]

2. **Reassess beneficial ownership disclosure of insiders:** Currently, under Item 6.E of Form 20-F, companies are required to disclose share ownership and information regarding options, whether or not exercisable, held by directors and executive officers, with many companies providing this information in or next to the beneficial ownership table relating to 5%+ shareholders. However, this information is *not required*, and may instead be replaced by an asterisk next to the individual's name, for any director or executive officer owning less than one percent of the applicable class of shares *if* the company has not previously disclosed the information publicly. Following the application of Section 16(a) to FPIs on March 18, 2026 and the filing of the first Form 3s, and, to the extent required, Form 4s, by directors and executive officers, share ownership and outstanding option information for directors and executive officers will be made public for all FPIs (absent an exemption provided by the SEC). Given that one of the two conditions for avoiding individual disclosure will no longer be satisfied, FPIs who previously did not disclose this information should be prepared to do so in the Form 20-F for each director and executive officer, even if amounts are *de minimis*. FPIs should also confirm that such disclosure is consistent with the data provided on Section 16(a) reports. FPIs are reminded that, with respect to the required options disclosure, both exercisable and unexercisable options are covered by the disclosure obligation, which requires reporting the following information: the number of underlying shares, the exercise price and the expiration date.

3. **Reassess the compensation disclosure for insiders:** Currently, under Item 6.B of Form 20-F, companies must provide the amount of compensation paid, and benefits in kind granted, to directors and executive officers, by the company and its subsidiaries. This disclosure is required on an individual basis *unless* individual disclosure is not required in the company's home country and is not otherwise publicly disclosed by the company.[19] Following the application of Section 16(a) to FPIs on March 18, 2026 and the filing of the first Form 3s, and, to the extent required, Form 4s, by directors and executive officers, certain information on the stock compensation information of directors and executive officers will be made public for all FPIs (absent an exemption provided by the SEC). Given that one of the two conditions for avoiding individual disclosure will no longer be satisfied, FPIs who previously did not disclose this information should be prepared to do so in the Form 20-F for each director and executive officer to the extent included in already-filed Forms 3 and 4. This would include: (1) for stock options granted in the year covered by the Form 20-F, the number of underlying shares, the exercise price and the expiration date (even if not currently exercisable), consistent with the outstanding options disclosure in Item 6.E of Form 20-F; and (2) for RSUs or PSUs granted in the year covered by the Form 20-F, the number of underlying shares and the vesting terms (even if not currently vested). In both cases, FPIs may be able to cross-reference certain beneficial ownership disclosures in Item 6.E of Form 20-F, to the extent that the underlying shares are already considered beneficially owned. Additionally, given that grant date fair values are not disclosed in Forms 3 and 4, FPIs would not be expected to disclose the individual dollar value associated with individual directors' and officers' compensatory equity grants.

4. **Reassess human capital management and diversity, equity and inclusion (DEI) disclosures:** The HCM disclosures required in the "Business" section of U.S. domestic issuers' Form 10-Ks are not required for FPIs, and FPIs generally are not adopting such disclosures voluntarily. However, given institutional investor focus on the topic, particularly in light of shifting priorities and policies with respect to DEI, this could also be a focus area for Form 20-F readers, so it is important for FPIs to consider any appropriate disclosure on this topic, depending on their investor base (subject to any limitations imposed by the laws of the jurisdiction under which the

[18] According to the SEC's complaint, filed on April 9, 2025, between spring 2019 and December 2022, the former CEO allegedly marketed the company as a mobile shopping application that used AI to process transactions, including allegedly telling investors that the application used automated technology that relied on AI to complete purchases made through the application without human involvement. However, the company actually relied in large part on contract employees to manually input users' orders placed on the app; the company's success rate for completed transactions was lower than what he represented to investors; and the app was not able to use AI to complete purchases. The SEC's complaint charged the former CEO with violations of Section 17(a) of the Securities Act of 1933 and of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The U.S. Department of Justice (DOJ) also filed a parallel action against the former CEO.

[19] The standard also covers contingent or deferred compensation accrued for the year, even if the compensation is payable at a later date.

registrant is organized). Notably, there has been a significant shift in diversity-related human capital disclosures made by U.S. domestic issuers in 2025, fueled, in part, by a series of executive orders issued by President Trump aimed at eliminating DEI programs, including one which called on agencies to "combat illegal private-sector DEI preferences, mandates, policies, programs, and activities."[20] For example, based on a study done on Form 10-Ks which is informative to FPIs filing Form 20-Fs, 60% fewer S&P 500 companies used the phrase "diversity, equity and inclusion" in their 2025 Form 10-Ks compared to 2024.[21] Similarly, a White & Case survey of the 2025 Form 10-Ks of 25 large-cap companies found that all but one company reduced diversity disclosures, including by removing references to diversity statistics, EEO-1 data and recruiting strategies to increase diversity. Many companies have reframed DEI-related disclosures to emphasize compliance with applicable laws, merit-based opportunities, skills-based hiring, company culture and broader workforce development, while reducing language on diversity and inclusion and/or eliminating disclosures on workforce demographics. These reframed disclosures focused instead on descriptors like "merit-based," "excellence" and "achievement," as well as "belonging," "engagement" and "supporting all employees." In White & Case's Form 10-K survey, over half of the surveyed companies that reduced or removed DEI language added this type of reframed language. In light of this shift in focus, companies should reassess their disclosure and ensure it is updated and aligned with their current priorities and policies on human capital management, including those priorities adopted at the Board level, senior management and investors. However, it is also important for FPIs to keep in mind home jurisdiction priorities, policies and preferences, as these may differ significantly from the shift observed in the U.S., and to tailor any disclosure accordingly.

5. **Cybersecurity:** For the third year, public companies are now required to include mandatory cybersecurity disclosures in Form 20-Fs (under Part III, Item 16K). For a detailed discussion of the SEC's requirements on this cybersecurity disclosure, including guiding principles for preparing the disclosure, see our 2024 Annual Memo. In terms of recent SEC focus areas for this disclosure, there was only one comment letter on Form 20-F cybersecurity disclosure issued after the start of the second Trump administration, which asked for risk factor disclosure explaining any foreign laws which result in oversight of data security and the associated impacts.[22] There were also only three SEC comment letters on Form 10-K cybersecurity disclosures by U.S. domestic issuers issued after the start of the second Trump administration,[23] all of which addressed companies' failure to include the required new disclosure.[24] Beyond SEC comments, deficiencies in cybersecurity disclosure remain a target for litigation, and companies should therefore continue to focus on fundamental lessons from prior court decisions that underscore bedrock disclosure principles of materiality and accuracy, including:

   - ***Do not disclose a risk as hypothetical when in fact that risk has already materialized***, and do not describe specific, known risks in only generic terms.[25]

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20 In addition, the DOJ issued a memorandum focused on investigating and eliminating purportedly illegal DEI programs in the private sector in conjunction with these executive orders. This was followed by DOJ guidance for recipients of federal funding to ensure they do not engage in unlawful discrimination, which emphasized the significant legal risks of initiatives involving discrimination based on protected characteristics.

21 "How Corporate America is Retreating from D.E.I." by Emma Goldberg, Aaron Krolik and Lily Boyce (New York Times, March 13, 2025), available here.

22 "In future filings, to the extent applicable, please revise to provide risk factor disclosure explaining whether there are any commensurate laws or regulations in Hong Kong or Macau which result in oversight over data security and explain how this oversight impacts your business and the offering and to what extent you believe that you are compliant with the regulations or policies that have been issued." (May 14, 2025)

23 The decline in comments may reflect a shift in priorities for the SEC's newly created Cyber and Emerging Technologies Unit announced in February 2025, which had noted it would focus on "public issuer fraudulent disclosure relating to cybersecurity," indicating a possible move towards enforcement actions premised on traditional concepts of fraud and away from targeting disclosures meeting a lower negligence standard. See SEC.gov | SEC Announces Cyber and Emerging Technologies Unit to Protect Retail Investors.

24 Previous SEC comment letters have included requests for more detailed descriptions of board/management oversight, expertise, and processes for managing cyber risks, clarification on third-party involvement, and ensuring disclosures are not omitted or vague.

25 For example, *see* Mylan N.V., a major pharmaceutical company that agreed to pay a $30 million penalty to the SEC for using hypothetical language to discuss risks related to potential misclassification of its most profitable product as a generic drug because the company knew at the time that a government agency had in fact already taken a contrary position.

- ***Evaluate and update existing disclosures*** to reflect changing circumstances and the company's changed risk profile as a result of any recent cybersecurity incident.[26]
- ***Describe fully and accurately any cybersecurity incidents that are disclosed***; quantifying certain aspects of an incident without disclosing other material information on its scope and impact may be materially misleading. Nonetheless, any disclosures should be balanced against the need for the company to avoid revealing critical information about its cybersecurity controls or risk to protect against future cyberattacks.[27]

6. **Remember to review and update risk factors.** Risk factor disclosure is a critical part of the Form 20-F, and companies should consider developments in 2025 as they review and update their risk factors. These considerations include developments with respect to (1) AI and related impacts, as referenced above, (2) economic uncertainty and recent cost efficiency measures impacting businesses, and (3) wars and other international geopolitical developments, including the imposition of tariffs and recent U.S. military operations in Venezuela. These risks can also become factors related to known trends and uncertainties for discussion in the MD&A (see below). For a discussion of these developments and important tips for drafting risk factors, see our alert, Key Considerations for Updating Annual Report Risk Factors in 2026.

7. **MD&A considerations.** As in prior years, MD&A has remained one of the top targets of SEC Staff comments, with recent comments focused on the following:
   - the ***discussion and analysis of results of operations***, including a description and quantification of each material factor, unusual or infrequent event or other development, that in each case has caused changes in the results of operations between periods (for example, these comments have highlighted changes related to a condensed labor market, wage inflation, global supply chain issues and inflation affecting revenues and underwriting);[28]
   - the ***discussion of known trends or uncertainties*** that are reasonably expected to materially impact near and long-term results, including additional disclosure on the impact of matters such as store closures, billing problems, discounting, unneeded inventory, supply chain disruptions, inflation and increases in interest rates;[29]
   - ***critical accounting estimates***, including the judgments made in the application of significant accounting policies and the likelihood of materially different reported results if different assumptions were used;[30]

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26 For example, see Yahoo, Inc., where the SEC found that Yahoo's risk factor disclosures in its annual and quarterly reports were materially misleading in that they claimed the company only faced the "risk of potential future data breaches" that might expose the company to loss and liability "without disclosing that a massive data breach had in fact already occurred."

27 For example, see First American Financial Corporation, a real estate settlement services company that settled an enforcement action for its alleged failure to adequately disclose a security vulnerability that could be used to compromise the company's computer systems, which the company's information security personnel had been aware of for several months.

28 For example, see the following SEC Staff comment: "You state the increase in net revenue from online games was attributable to strong performance of certain self-developed titles and mobile titles and certain licensed titles, which were partially offset by decreased net revenues from live streaming services. Similarly, you attribute the increase in cost of revenues from your games and related value-added services to an increase in royalty fees for certain licensed games and staff costs, which was partially offset by a decrease in revenue sharing costs. Where a material change in a line item is attributed to two or more factors, including any offsetting factors, please revise throughout your results of operations disclosure to include a quantified discussion of each identified factor. In addition, avoid using terms such as "principally" or "mainly." Refer to Item 5.A.1 of Form 20-F." See letter to Netease, Inc. (July 2, 2025).

29 For example, "We note that higher supply chain costs have impacted your results of operations. Please enhance your disclosure to clarify whether supply chain disruptions materially affect your outlook or business goals. Specify whether these challenges have materially impacted your results of operations or capital resources and quantify, to the extent possible, how your sales, profits, and/or liquidity have been impacted." See comment letter to Canadian Solar (August 26, 2022).

30 For example, "You disclose for Sports Technology and Services you primarily receive noncash consideration for which there is not a readily determinable fair value and for Betting Technology, Content and Services in regard to contracts with variable consideration associated with overages you record cumulative effect adjustments when there are constraint changes that impact your estimate of the transaction price. Please provide qualitative and quantitative information necessary to understand the estimation uncertainty associated with each revenue stream and the impact these estimates have had or are reasonably likely to have on your financial condition or results of operations to the extent the information is material and

- ***liquidity and capital resources***, including requests for a clearer discussion of the drivers of cash flows and the trends and uncertainties related to meeting known or reasonably likely future cash requirements;[31] and
- *the **metrics used by management in assessing performance and use of key performance indicators (KPIs)**,* including requests for disclosure on how they are calculated and period over period changes, how KPIs are used by management and why they are useful for investors, and why KPIs or other performance metrics are discussed in earnings releases or investor presentations if they are not also discussed in their periodic reports or presented inconsistently.[32]

Companies should keep in mind these areas of focus and review their MD&A disclosure to confirm they provide investors with key information on the company's financial performance and future outlook through the eyes of management, allowing readers to have a deeper understanding of the company's financial condition from the perspective of company leadership. As the MD&A is crucial to an understanding of the company's current performance and future trends that will impact operations, companies should review their MD&A disclosures to confirm that they provide sufficiently specific and thorough analyses.

8. **Mind the non-GAAP/non-IFRS.** The SEC Staff continues to focus on non-GAAP/non-IFRS financial measures in its comment letters, following the release of updated non-GAAP/non-IFRS C&DIs in December 2022[33] (for a summary of these updates, see "Non-GAAP/Non-IFRS Compliance – Five Key Reminders" in our 2023 Annual Memo). In 2025, many of the Staff's comment letters targeting non-GAAP disclosures focused on (in order of frequency)[34]:
    - the appropriateness of specified adjustments to eliminate normal, recurring cash operating expenses or items identified as non-recurring, infrequent or unusual;[35]
    - labeling and identification of non-GAAP/non-IFRS measures;[36]

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reasonably available. This information should include why these estimates are subject to uncertainty and, to the extent the information is material and reasonably available, how much these estimates and/or associated assumptions have changed over a relevant period, and the sensitivity of the reported amounts to the material methods, assumptions and estimates underlying their calculation. Refer to Item 5.E of Form 20-F and in particular Section V of Release No. 33-8350 referred to in instruction 1 to Instructions to Item 5 for guidance." See letter to Genius Sports Ltd. (August 14, 2024).

31 For example, "We note significant changes in your liquidity and capital resources such as increases in cash, short-term investments and accounts receivable along with increases in bank loans. However, we do not see any discussion about the underlying reasons for these trends. Revise future filings to include more robust discussion about any *known trends* or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way. In addition, future filing should more fully describe any known material trends, favorable or unfavorable, in the registrant's capital resources. Reference Item 303(b)(1) of Regulation S-K." See letter to Jin Medical International Ltd. (March 6, 2025).

32 For example: "We note your key financial highlight of ASP and discussions of ASP growth in your revenues by channel and segment comparisons, which appears to be a metric. Please revise your disclosures to properly identify ASP as a metric, if true, and provide all disclosures consistent with the guidance in SEC Release No. 33-10751. Additionally, tell us your consideration for disclosing ASP and the number of footwear pairs sold by channel and segment." See letter to Birkenstock Holding PLC (March 13, 2025).

See our alert, "SEC Releases New Guidance on KPIs", available here.

33 Specifically, the SEC updated non-GAAP / non-IFRS Financial Measures C&DIs Questions 100.01, 100.04-100.06, and 102.10(a), (b) and (c), which can be found here.

34 See Price Waterhouse Coopers article, "Non-GAAP measures: SEC staff comments" (May 23, 2025).

35 For example: "As a related matter, we see that Contribution Margin is adjusted to exclude costs in geographies that are in implementation and are not yet generating revenue. Please also revise future filings to remove the adjustment since the costs relate to normal recurring costs to grow your business. Reference Question 100.01 of the CD&I related to non-GAAP Financial Measure Updated December 13, 2022."

Additionally, Staff comments in this regard have focused on non-GAAP adjustments related to frequent restructuring and acquisition-related costs, where the Staff's comments have asked companies to (i) detail the facts and circumstances supporting an adjustment for what could be a recurring cost and (ii) explain and quantify the components of these adjustments.

36 For example: "We note your presentation of several non-GAAP measures including revenue and gross margin excluding acquisitions, gross margin excluding the impact of amortization of acquired software and income tax provisions and effective tax rate excluding various items; however, you have not provided the disclosures required by Item 10(e)(1)(i) of Regulation S-K nor have you labelled these items as non-GAAP. Please revise to provide the required disclosures or

- the presentation with equal or greater prominence of the most directly comparable GAAP/IFRS financial measure;[37]
- the use of individually tailored accounting principles;[38]
- disclosure regarding the reasons why management believes the non-GAAP/non-IFRS presentation provides useful information to investors;[39] and
- reconciliations from the most comparable GAAP/IFRS financial measure.[40]

9. **Back to basics on environmental disclosures.** Although the SEC has withdrawn its defense of recently adopted and highly prescriptive SEC rules providing for extensive new climate-related disclosures,[41] companies should continue to consider their environmental-related disclosures in light of existing principles-based materiality requirements and guidance, including the SEC's 2010 climate change disclosure guidance and the SEC's 2021 sample comment letter on climate disclosure. In addition, although the Staff did not issue any climate-related comments in 2025, companies should continue to be mindful of potential areas of SEC focus that were emphasized in the SEC's 2010 guidance, such as the physical effects of climate change on a company's operations and results[42] and any material expenditures for climate-related projects and compliance costs, which depend on the nature of the company's business and its particular facts and circumstances.[43]

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alternatively incorporate the quantitative impact of these items in your discussion of the changes in the respective line items."

37 For example: "You present numerous non-GAAP measures but do not disclose the comparable GAAP measures. Please revise to include the comparable GAAP measure for each non-GAAP measure presented with equal or greater prominence."

38 For example: "We note you include adjustments in arriving at net operating profit after taxes that appear to remove your operating lease rent expense under GAAP and replace it with estimated depreciation and include lease adjustments in arriving at average invested capital. As this appears to be an individually tailored method, please remove from your filling or advise. Refer to Question 100.04 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations."

39 For example: "Tell us and revise your disclosures in future filings to more fully explain what the measure "Tangible book value per common share excluding AOCI" represents and its usefulness to investors. In addition, please revise your Non-GAAP Financial Measures discussion in your investor presentation to clearly explain how, for each of your non-GAAP measures, investors should use the measure or what specifically the measure tells investors."

40 For example: "We note your presentation of the non-GAAP measure total gross margin. Please revise your reconciliation for this non-GAAP measure to the most directly comparable GAAP measure of gross margin in accordance with Item 10(e)(1)(i)(B) of Regulation S-K. If you do not believe gross margin that includes depreciation and amortization is the most directly comparable GAAP measure, please tell us why in your response. In addition, retitle this measure to avoid confusion with the GAAP measure of gross margin."

41 The SEC requested that the Eighth Circuit resolve the litigation on the merits. In September 2025, the Eighth Circuit ordered that the litigation would be held in abeyance until the SEC reconsiders or renews its defense of the Climate Rules, which seems very unlikely at this time. Therefore, the litigation remains paused and will likely remain so for the foreseeable future.

42 For example: "We note [your] disclosure … that climate change may increase the frequency and severity of natural catastrophes and the resulting losses in the future and impact your risk modeling assumptions. We further note [your] disclosure … that insured losses due to extreme weather events are increasing over time, and as climate change worsens, these losses will continue to grow. Please discuss the physical effects of climate change on your operations and results. This disclosure may include the following: severity of weather, such as floods, hurricanes, sea levels, arability of farmland, extreme fires, and water availability and quality; quantification of material weather-related damages to your property or operations; potential for indirect weather-related impacts that have affected or may affect your major customers or insured locations; and any weather-related impacts on the cost or availability of (re)insurance. Include quantitative information for each of the periods covered … and explain whether increased amounts are expected in future periods."

In addition, the 2010 guidance noted that: "significant physical effects of climate change, such as effects on the severity of weather (for example, floods or hurricanes), sea levels, the arability of farmland, and water availability and quality, have the potential to affect a registrant's operations and results…".

43 For example: "We note your disclosure … stating that you are taking certain steps to address climate change. Revise your disclosure to identify any past and/or future capital expenditures for climate-related projects. As part of your response, provide quantitative information for these types of expenditures for each of the periods for which financial statements are presented … and for any future periods."

10. **Prepare for Section 16 compliance.** Under recently enacted legislation, insider reporting obligations under Section 16(a) of the Exchange Act have been extended to directors and officers of FPIs. As a result, directors[44] and officers[45] (but not 10% shareholders) of FPIs will be required to file reports on Forms 3, 4 and 5 on EDGAR to disclose their beneficial ownership of the issuer's equity securities (both derivative and non-derivative), as well as any subsequent changes in ownership, for so long as they serve as a director or officer.[46]

    The new reporting requirements are expected to go into effect on **March 18, 2026**. The legislation does permit the SEC to conditionally or unconditionally exempt any person, security or transaction from the requirements if the SEC determines that the laws of a foreign jurisdiction apply "substantially similar requirements" to such person, security or transaction; however, "substantially similar" is not defined or explained in the legislation, nor does it specify when or how the SEC will grant exemptive relief. Therefore, Section 16(a) reporting obligations may apply before the SEC finalizes such exemptive actions and FPIs should consider the impact of the new requirements, including:

    - the fact that ***for many FPI directors and officers, the new filings will represent the first time they need to publicly disclose their individual shareholdings, and, beyond sales covered by Form 144s, their ongoing transactions in company stock*** (including equity-based compensation grants by the issuer, exercises/vestings of such grants, shareholdings in entities they control, share purchases they make voluntarily and sales of all such shares, whether or not in the United States). Given the magnitude of this change from current practice, as well as possible concerns for the personal security of executive officers in certain jurisdictions whose share compensation and sales will now be fully public absent an exemption, consideration should be given to compensation philosophy or strategy, such as paying executive officers more in cash than shares, and related disclosures.

    - ***reevaluating individuals designated as "executive officers"*** in their disclosure and in connection with the adoption of their clawback policies, as those same officers will now be subject to the above Section 16 reporting requirements. Under SEC rules, individuals that an FPI identifies as "executive officers" for purposes of reports on Form 20-F would be presumed to also be officers for purposes of Section 16(a) reporting. In addition, the principal financial officer and the principal accounting officer (or, if there is no such accounting officer, the controller), if not already identified as executive officers, would also be considered executive officers, as both are specifically identified in the definition of officer applicable for Section 16(a) reporting and claw-back policies.

    - to the extent not already ***enrolled in EDGAR Next***, FPIs should ensure each director and officer is appropriately set up to make filings with the SEC. As noted above, this includes the principal accounting officer, who is a Section 16 officer. For more information on this process, see our prior alert, Prepare now for EDGAR Next.

    - ***review insider trading policies*** or adopt new policies to require that directors and officers report trades internally to ensure compliance with new Section 16(a) reporting requirements, including potentially

44 In addition to individuals serving on a company's board, the SEC and US Courts have sometimes recognized that a shareholder can be expressly or implicitly "deputized" as a director if it appoints a representative to serve on the board. In such a case, the entity or other person could be deemed a director and required to file reports under Section 16(a). This is a complicated analysis where counsel's assistance is required. However, since Section 16(b) short-swing profit liability will not apply to FPIs, the pressure for shareholders of FPIs to determine whether they are "directors by deputization" is expected to be less. For more information, see our alert, "*Directors and officers of FPIs will be subject to Section 16 reporting requirements*."

45 Under SEC rules, individuals that an FPI identifies as "executive officers" for purposes of reports on Form 20-F would be presumed to also be officers for purposes of Section 16(a) reporting. In addition, the principal financial officer and the principal accounting officer (or, if there is no such accounting officer, the controller), if not already identified as executive officers, would also be considered executive officers, as both are specifically identified in the definition of officer applicable for Section 16(a) reporting and claw-back policies.

46 These reports must be made in English and will apply to all holdings and transactions in the issuer's equity securities (other than those already exempt under Section 16(a)), whether or not conducted in the United States or to United States persons.

subjecting trading by directors and executive officers to pre-clearance in order to facilitate timely reporting of transactions.

- ***confirm filing responsibilities and proper reporting systems*, **and, if the company plans to assume the responsibility for making Section 16 filings on behalf of their directors and officers, it must get powers of attorney for all Section 16 officers in order to be able to file on their behalf. Companies that are not familiar with Section 16(a) reporting should coordinate with US counsel to ensure that transactions and shareholdings are reported correctly.[47]

For more information on the legislation and its implications, see our client alert.

[47] Late or missing beneficial ownership reports under Sections 13 and 16 have been a recent focus of the SEC, including several enforcement actions against both individuals and the affiliated public companies that had undertaken to file on their behalf for failure to timely file Section 16 reports (with more focus on domestic companies, but still some actions against FPIs, in Section 13 reports).

Appendix A: *Additional Housekeeping Reminders*

1. The following Form 20-F form check items are not new this year, but were added in the past few years and should therefore be confirmed for your upcoming filing:

(a) 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.[48]

(b) 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."

(c) 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.

(d) 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.[49] Companies should coordinate this tagging with the financial printer.

(e) For companies with mining operations,[50] consider whether expanded Regulation S-K 1300 requirements 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.[51] In addition,

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48 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 5 Items 301, 302 and 303" in our prior memo.

49 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.

50 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.

51 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.

companies with property that is *individually* material to their business must obtain a technical report summary,[52] 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.[53]

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

   (a) **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.

   (b) **Effective Shelf Form F-1s**:

      (i) 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, 2026). 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, 2026) 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.

      (ii) 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.

   (c) Effective Shelf Form F-3s:

      (i) 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, 2025, 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).

      (ii) 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,

[52] 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).

[53] 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 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.

including six-month consolidated interim financial statements (which may be unaudited), containing explanatory notes.[54] 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 addition to the updates discussed in Part I, Section 4, companies should:

   (i) In light of last year's SEC enforcement action related to director independence, consider clarifying to directors that close business or personal relationships with management may need to be disclosed in their responses to D&O Questionnaires and provide examples of the types of relationships that could impair independence;[55]

   (ii) Consider adding or refining questions on outside directorships or officerships to identify any potential antitrust concerns, given the Department of Justice's focus on potential violations of Section 8 of the Clayton Act; and

   (iii) Consider building out (or adding) Iran-related activities questions to cover potentially problematic transactions with Russian entities.[56]

See **Appendix B** for a summary of 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 overboarding policies.

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[54] 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."

[55] The general independence test generally requires the Board to affirmatively determine that there are no relationships between the director and the listed company's management that impact the director's independence. In the SEC's recent action, the relationship at issue involved a director with a close friendship with one of the company's executives, which included regular, luxury vacations together with their respective spouses, paid for by the director.

[56] 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 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 20-F 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 policy for FPIs in US tax havens requires at least one female director.[57]

Israeli FPIs

- **ISS**: ISS will generally vote against the chair of the nominating committee (or the chair of the committee designated with the responsibility of a nominating committee), or other directors on a case-by-case basis, if both genders are not represented on the board of directors. Exceptions may apply in cases where the company has publicly disclosed a commitment to have both genders represented on the board within one year, or where other mitigating factors are present and deemed relevant.[58]

- **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 is not at least 30% gender diverse, or for companies outside the Russell 3000, if it does not have at least one female director.[59] [60]
  - *Racial/Ethnic Diversity*: Glass Lewis encourages ethnic/racial diversity, and specifically notes the relatively low, but slowly increasing, 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:

- **BlackRock**: BlackRock maintains region/country-specific market guidelines:
  - *EMEA*: In its EMEA voting guidelines, BlackRock notes that, "[i]n assessing board composition, we take into account a company's board size, business model, strategy, market capitalization, and ownership structure, as well as the market in which the company operates." BlackRock also notes its "general view" that, subject to market-specific standards, it is looking for "boards to be representative of the company's key stakeholders, with an approach to diversity aligned with any market-level standards or practices. As applicable with local rules, we look for boards to work

57 See ISS's America's regional voting guidelines.

58 See ISS's policies for Israeli companies.

59 Pursuant to a 2025 policy update, Glass Lewis will flag all director election proposals at US companies in which its recommendation is based, at least in part, on considerations of gender or underrepresented community diversity and offer our clients two recommendations – one that applies its Benchmark Policy approach as articulated in its Benchmark Policy Guidelines for the US Market, and one that does not consider gender or underrepresented community diversity as part of the recommendation.

60 See Glass Lewis's policies for Israeli companies.

towards at least 30% of the under-represented gender, or align with higher mandatory gender quotas, where prescribed by the respective local legislation).” BlackRock asks companies, consistent with local law, “to provide sufficient information on each director/candidate, and in aggregate, so that shareholders can understand how 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 - have been accounted for within the proposed board composition.” BlackRock notes that the organization “appreciate[s] it when these disclosures cover how diversity has been accounted for in the appointment of members to key leadership roles, such as executives, board Chair, senior/Lead Independent Director and committee chairs.”[61]

- *Latin America*: To the extent that a company’s board is a sustained outlier compared to local requirements and/or market practice in terms of its variety of experiences, perspectives, and skillsets, BlackRock may vote on case-by-case basis against relevant director(s).[62] Aspects of a director’s background that may, depending on the company, contribute to the experiences, perspectives, and skillsets that inform effective board oversight include professional background, as well as demographic background, including gender, race/ethnicity, disability, LGBTQ+ identity, and national, indigenous, religious, or cultural identity.
- *Israel*: BlackRock looks to boards to be representative of the company’s key stakeholders, with an approach to diversity that is aligned with market-level standards or practices. Under the Israeli Companies Law, if a company’s board is composed entirely of one gender, any newly appointed external director must be of the other gender[63].

- **Vanguard**: For European and UK companies, Vanguard looks for boards to be “fit for purpose by reflecting sufficient breadth of skills, experience, perspective, and personal characteristics (such as age, gender, and/or race/ethnicity) resulting in cognitive diversity that enables effective, independent oversight on behalf of all shareholders. The funds believe that the appropriate mix of skills, experience, perspective, and personal characteristics is unique to each board and should reflect expertise related to the company’s strategy and material risks from a variety of vantage points.” To this end, Vanguard seeks “fulsome disclosure of a board’s process for building, assessing, and maintaining an effective board well-suited to supporting the company’s strategy, long-term performance, and shareholder returns. This disclosure should include the range of skills, background, and experience that each board member provides and their alignment with the company’s strategy (typically presented as a skills matrix); additionally, the funds look for such disclosure to provide an understanding of the directors’ personal characteristics to enable shareholders to understand the breadth of a board’s composition. The funds also look for disclosure regarding the board’s process for evaluating the composition and effectiveness of their board on a regular basis, the identification of gaps and opportunities to be addressed through board refreshment and evolution, and a robust nomination (and renomination) process to ensure the right mix of skills, experience, perspective, and personal characteristics into the future. Vanguard also looks for a board’s composition to “comply with requirements set by relevant market-specific governance frameworks (e.g., listing standards, governance codes, laws, regulations, etc.) and to be consistent with market norms in the markets in which the company is listed. To the extent that a board’s composition is inconsistent with such requirements or differs from prevailing market norms, the funds look for the board’s rationale for such differences (and any anticipated actions) to be explained in the company’s public disclosures.”[64]

- **State Street**: State Street’s published guidelines state it believes “effective board oversight of a company’s long-term business strategy necessitates a diversity of backgrounds, experiences, and perspectives, which may include a range of characteristics such as skills, gender, race, ethnicity, and age. By having a critical mass of diverse perspectives, boards could experience the benefits that may lead to innovative ideas and foster more robust conversations about a company’s strategy.” State Street recognizes that “many factors may influence board composition, including board size, geographic location, and local regulations, among others” and believes that “a robust nominating and governance process is essential to achieving a board

61 See BlackRock Investment Stewardship Proxy voting guidelines for European, Middle Eastern, and African securities.
62 See BlackRock's Proxy voting guidelines for Benchmark Policies - Latin American securities.
63 See BlackRock’s Israel-specific voting guidelines.
64 See Vanguard's Proxy voting policy for European and UK portfolio companies. Vanguard’s voting policies for other regions can be found at: Investment Stewardship reports and policies.

composition that is designed to facilitate effective, independent oversight of a company's long-term strategy." Ultimately, "nominating committees are best placed to determine the most effective board composition and we encourage companies to ensure that there are sufficient levels of diverse experiences and perspectives represented in the boardroom."[65]

[65] See State Street's State Street's Global Proxy Voting and Engagement Policy.

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, while issuers should always check for country-specific guidance, the general policies of major institutional investors are discussed below:

- **BlackRock**: "As the role and expectations of a director are increasingly demanding, directors must be able to commit an appropriate amount of time to board and committee matters. It is important that directors have the capacity to meet all of their responsibilities — including when there are unforeseen events — and therefore, we consider it best practice when they don't take on an excessive number of roles that would impair their ability to fulfill their duties. To better understand a director's ability to engage and the board to function effectively, we appreciate it when companies **disclose board and committee members' attendance**, as well as the **time commitment** required from directors. Shareholders would benefit from additional transparency over how nomination committees assess their directors' time commitments and with what frequency these reviews take place. However, in BIS's experience, the assessment of whether a director is over-committed is not just based on their attendance record but also on their ability to provide appropriate time to meet all responsibilities when one of the companies on whose board they serve faces exceptional circumstances."

    - *EMEA:* 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 total** public company boards; (ii) serving as a non-executive board chair on one public company board 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 **at least one** other public company board; 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 one public company.[66] In case of an executive officer, Blackrock would vote against his/her (re)election only to boards where he/she serves as a non-executive director. In assessing whether to support a (re)election in these circumstances, through BlackRock's engagement with the board it will consider any perceived progress in the candidate's response to concerns about capacity, the circumstances in which the candidate will remain in all of his/her different roles and the time frame over which changes will be made.[67]

    - *Latin America*: For companies in Latin America, BlackRock's policy is that: (i) a public company executive can sit on a total of **three public company boards**, and (ii) non-executive directors can sit on a total of **five public company boards**. In addition, where a director maintains a Chair role of a publicly listed company in European markets, BlackRock may consider that responsibility as equal to **two** board commitments, consistent with its EMEA Proxy Voting Guidelines, and will take

[66] Under BlackRock's EMEA guidelines, the executive officer consists of the executive chair, the chief executive officer (CEO), the deputy chief executive officer, the chief financial officer, the chief operating officer and other similar level executives who are members of the management leadership team or executive committee (e.g., Chief Information Officer, Chief Technology Officer, Chief Risk Officer, Chief People Officer, etc.) or members of the management board of listed companies with a two-tier system.

[67] See BlackRock Responsible Investment Guidelines EMEA. There may also be country-specific nuances that companies should consider in BlackRock's guidelines.

the total number of board commitments across its global policies into account for director elections.[68]

For companies in other regions, BlackRock's Global Engagement and Voting Guidelines note that BlackRock "will take local norms and practices into consideration when making … voting determinations across markets" and that they "may vote against the election of directors who do not seem to have sufficient capacity to effectively fulfil their duties to the board and company."[69]

- **State Street**: State Street believes that a company's nominating committee is best placed to determine appropriate time commitments for the company's directors. State Street considers "if a company publicly discloses its director time commitment policy (e.g., within corporate governance guidelines, proxy statement, annual report, company website, etc.) and if this policy or associated disclosure outlines the factors that the nominating committee considers to assess director time commitments during the annual policy review process."[70]
- **Vanguard**: For European and UK companies, Vanguard believes that "[d]irectors' responsibilities are complex and time-consuming. Therefore, the funds seek to understand whether the number of directorship positions held by a director makes it challenging to dedicate the requisite time and attention to effectively fulfill their responsibilities at each company (sometimes referred to as being "overboarded"). While no two boards are identical and time commitments may vary, the funds believe the limitations on the number of board positions held by individual directors are appropriate, absent compelling evidence to the contrary." 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, a fund will consider voting for a director who would otherwise be considered overboarded under the standards above, taking into account relevant market-specific governance frameworks or companyspecific facts and circumstances. This may include, but is not limited to, indications that the director will have sufficient capacity to fulfill their responsibilities on the board of that company and/or a review of the full board's composition and capacity. In addition, a fund may vote for a director if the director has publicly committed to stepping down from the directorship(s) necessary to fall within these thresholds."[71]

Israeli FPIs

- **ISS**: ISS will generally recommend a vote against a candidate when they hold an excessive number of board appointments, as defined by the following guidelines: "Any director or candidate who holds more than five mandates at listed companies will be classified as overboarded. For the purposes of calculating this limit, a non-executive directorship counts as one mandate, a non-executive chair position counts as two mandates, and a position as executive director (or a comparable role) is counted as three mandates. Also, any director or candidate who holds the position of executive director (or a comparable role) at one company and a non-executive chair at a different company will be classified as overboarded."
- **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:

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68 See BlackRock's Proxy voting guidelines for Benchmark Policies - Latin American securities.

69 For BlackRock's specific voting policies for other regions, see its region- or country-specific guidelines, for example, Proxy voting guidelines for Benchmark Policies - Southeast Asia, South Korea and Taiwan securities and Proxy voting guidelines for Japan securities.

70 See State Street Global Advisors Global Proxy Voting and Engagement Policy.

71 See Vanguard's Proxy voting policy for European and UK portfolio companies. Vanguard's voting policies for other regions (including certain countries that have standalone guidelines) can be found at: Investment Stewardship reports and policies.

- 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.[72]

72 *See* Glass Lewis's Israel Voting Guidelines.

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