PAUL HASTINGS

March 2024

Public Company Watch

Key Issues Impacting Public Companies

SEC Spotlight

Final Climate Change Rules Adopted

On Wednesday, March 6, 2024, the SEC approved in a 3-2 vote a final rule on climate disclosures that will "require registrants to provide certain climate-related information in their registration statements and annual reports." As many expected, the final rule includes significant cutbacks to the requirements contained in the initial proposal, most notably dropping Scope 3 emissions disclosure requirements. Nevertheless, the rule establishes a standardized disclosure regime under which public companies will be required to inform investors of their climate-related impacts and risks. The rule is already subject to legal challenge. For additional information regarding the final rule, including a description of the new disclosures and compliance dates, please see our **client alert**.

SEC Scrutiny on Beneficial Ownership Filings

Summary: On March 1, 2024, the SEC announced that it settled charges against an investment adviser for the investment adviser's violation of Section 13(d) of the Exchange Act. Under applicable securities laws, securityholders are required to report their beneficial ownership on a long-form Schedule 13D or a short-form Schedule 13G if they own more than five percent of an equity security registered under Section 12 of the Exchange Act (basically securities issued by public companies). Investors that beneficially own more than five percent of such a class must file a long-form Schedule 13D within five business days following their acquisition. Certain investors who fit within the exemptions set forth in Rule 13d-1 are eligible to file a short-form report on Schedule 13G in lieu of a Schedule 13D. In order to file a Schedule 13G, the investor must certify that the securities "were acquired and held in the ordinary course of business" and were not obtained "with the purpose [or] effect of changing or influencing the control of the issuer." If an investor that initially reported its beneficial ownership on Schedule 13G becomes ineligible to file on Schedule 13G, including because it acquires control intent, the issuer must file a Schedule 13D within five business days.

In the case in point, the investment adviser initially acquired 5.6% of the outstanding common stock of the issuer without the intent to change or influence control of the issuer, thereby enabling it to report its beneficial ownership on Schedule 13G. However, over the course of time, the investor continued to acquire additional shares of the issuer, building its stake to an estimated 9.9% of the issuer's outstanding common stock; the SEC order notes that during such time the investor acquired intent to influence control of the issuer. Specifically, the order notes that the investor held discussions with a large private equity firm concerning the potential for that firm to acquire the issuer and that the investor shared its valuation models and analyses with the private equity firm. The SEC considered the latest date on which there was evidence of a control intent to be the date on which the investor began drafting an offer letter to the issuer that contained a placeholder letter.

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The investor shared the letter with outside counsel on the next day. While facts and circumstances will vary in each instance, this fact pattern indicates that waiting until a control intent is *publicly* manifested may be later than the date a control intent was *privately* manifested.

The SEC determined that the investor's conversion from a passive investor to an investor with control intent triggered an obligation to file a Schedule 13D within ten calendar days (the deadline under the old beneficial ownership filing deadlines, which were in effect at the time of the violation). However, the investor did not file the required Schedule 13D until seven days past the deadline—the same day it publicly announced a bid to acquire the issuer.

The SEC found that the investor's failure to file a timely Schedule 13D upon acquiring its intent to control the issuer violated Section 13(d)(1) of the Exchange Act and Rule 13d-1 promulgated thereunder, ordered that the investor cease and desist from future violations and imposed a $950,000 civil penalty on the investor.

Key Takeaway: Given the recent updates to the beneficial ownership filing deadlines, explained in detail in our **client alert**, investors who become ineligible to utilize short form Schedule 13G will have even less time to file an initial Schedule 13D—five business days rather than 10 calendar days—further amplifying the gap between the public disclosure requirements set forth in the securities laws and many investors' preference to keep their control intent undisclosed. While facts and circumstances will vary in each instance, the fact pattern in this instance indicates that waiting until a control intent is *publicly* manifested may be later than the date a control intent is *privately* manifested. In addition, this case is part of a larger trend showcasing the SEC's increased focus on enforcing Section 13(d)(1) and Rule 13d-1, which should be duly noted by investors and may impact the public company acquisition market.

Activism Update

Delaware Chancery Court Invalidates Moelis Shareholder Agreement

In ***West Palm Beach Firefighters' Pension Fund v. Moelis & Company***, the Delaware Chancery Court found that certain pre-approval rights, board composition requirements and board committee requirements in favor of the Chairman and CEO of Moelis & Company violated, and therefore were facially invalid under, Section 141(a) of the Delaware General Corporation Law ("DGCL") because those requirements, located in a shareholder agreement, foreclosed the directors from managing the company in accordance with their statutory duties pursuant to the DGCL. In sum:

Shareholder Agreement Provision	Court Finding	Commentary
Approval rights over 18 different aspects of the Company's business.	The court found the entire set of approval rights to be invalid and did not opine on whether any individual right or subset of rights would have been valid.	Section 141(a) permits these rights to be included in the certificate of incorporation. This approach appears to offer the highest likelihood of ensuring enforceability.
Requires the board to (1) establish its size at 11 members; (2) fill Moelis vacancies with Moelis designees; (3) recommend shareholders vote in favor of Moelis nominees; and (4) populate board committees with a number of Moelis nominees proportionate to the number of Moelis board members.	The court found these four rights were invalid because they compelled the board to take certain actions.	The court noted that many of these rights could have been addressed by attaching the rights to a class of preferred stock or the issuance of a golden share. Because those would have been provisions in the certificate of incorporation, they would have complied with the requirements of Section 141(a).
Permits Moelis to designate potential candidates to fill a majority of the seats (but does not require the board to accept the designations). Requires the Board to (1) include Moelis nominees in the slate of directors to be elected (but not recommend shareholders elect them); and (2) use reasonable best efforts to cause the election of Moelis nominees.	The court found that these actions did not meaningfully infringe on board authority or simply required ministerial actions.	The court distinguishes between ministerial acts to ensure the inclusion of a nominee on a slate versus using reasonable best efforts to cause that director to be elected.

The implications of this decision are far-reaching for public and private companies alike. For example, many companies have shareholder agreements that establish arrangements that are similar to those in the Moelis case. This is particularly the case for sponsor-backed companies at the time of their IPO, but can also arise for companies that are already public and obtain a significant investment. In the shareholder activism context, the Moelis decision will impact settlement agreements, which are often referred to as "cooperation agreements." Specifically, the decision will impact provisions relating to limitations on the size of the board, the right of the activist to replace directors if its appointed directors resign and a company's ability to recommend in favor of activist appointed directors. For a more fulsome analysis of the Moelis case and its potential impacts, please see our **client alert**.

Litigation Corner

Delaware Chancery Court Tightens Scrutiny of Merger Approval Process

On February 29, 2024, the Delaware Court of Chancery issued a decision in ***Sjunde AP-Fonden v. Activision Blizzard, Inc.*** C.A. No. 2022-1001, 2024 WL 863290 (Del. Ch. Feb. 29, 2024), denying defendant's motion to dismiss claims alleging violations of Sections 251(b) and 251(c) of the DGCL based on a narrow and strict interpretation of the statutory requirements under Section 251(b) and Section 251(c) of the DGCL. The case's central focus was on common market practices used by Activision Blizzard, Inc.'s ("Activision") board of directors in approving the merger agreement governing its merger with Microsoft Corporation and in the ensuing notice of the stockholders' meeting to approve the merger agreement.

Background: The complaint arose from the merger by which Microsoft Corporation acquired Activision. Plaintiff, which owned stock in Activision, alleged that Activision violated Sections 251(b) and 251(c) of the DGCL, which govern board and stockholder approval of merger agreements. Section 251(b) requires that the board adopt a resolution approving a merger agreement in a form that contains certain substantive terms and conditions of the merger. Plaintiff interpreted Section 251(b) to require that a board approve an execution-version of a merger agreement that contains all of the substantive terms and conditions enumerated under Section 251(b). *Id*. at *4. Defendants argued that although Section 251(b) identifies information that must be in the merger agreement, it does not require that such information be included in the version approved by board resolution, and that Plaintiff's interpretation was contrary to the "norms of market practice," in which it is not uncommon for a board to approve a merger agreement in "draft or near-final form." *Id*. at *5.

Section 251(c) provides that a notice of the meeting of stockholders to approve a merger agreement must include either the merger agreement itself or a short summary of the agreement. Plaintiff claimed that by not including a summary of the merger agreement in the stockholders' meeting notice and attaching an incomplete version of the agreement to the proxy statement, Activision was in violation of Section 521(c). *Id*. at *8.

Decision: With respect to the Section 251(b) claims, the Court held that "[a]t a bare minimum, Section 251(b) requires a board to approve an essentially complete version of the merger agreement." *Id*. at *7. In this case, the merger agreement approved by the Activision board was not "essentially complete" as it failed to include (i) the legal name of the target, (ii) the purchase price, (iii) the disclosure schedules and (iv) the surviving company's charter. *Id*. at *8. The board also delegated to a committee the ability to finalize an interim operating covenant relating to dividends. Although acknowledging that requiring a board to approve the final execution version of a merger agreement did not align with market practice, the Court stated that "[w]here market practice exceeds the generous bounds of proximate ordering afforded by the DGCL, then market practice needs to check itself." *Id*. at *6.

With respect to the Section 251(c) claims, the Court found that although the notice of the stockholders' meeting included the proxy statement as an attachment (with the proxy including the merger agreement as an annex), it was reasonably conceivable that the notice was non-compliant, because the copy of the merger agreement included was missing the surviving company's charter, which is mandated by Section 251(c) to be included. *Id*. at *8-9.

Takeaways: Although (i) the decision is subject to judicial appeal and (ii) Delaware lawmakers may ultimately take action to amend the DGCL, going forward boards may need to alter past practices and ensure strict compliance with Sections 251(b) and (c). This includes ensuring that boards approve an "essentially complete" merger agreement, whether by waiting to hold board meetings until closer to the actual time of signing and announcement or by holding an earlier full board meeting to discuss the substantially complete merger agreement and a final short meeting to officially approve the execution version. Additionally, rather than attaching or annexing the proxy to the stockholders' notice, the full merger agreement should itself be attached (including the surviving company charter) or a compliant summary thereof included in the notice itself.

Second Circuit Issues Ruling On Whether Representations Regarding Scientific Studies Are Actionable Under Securities Laws

Summary: On December 26, 2023, the U.S. Court of Appeals for the Second Circuit issued its decision in ***In Re Philip Morris Int'l Inc. Sec. Litig.***, 89 F.4th 408 (2d Cir. 2023), in which it decided two matters of first impression concerning whether a securities fraud plaintiff is able to plead a material misrepresentation or omission regarding the results and methodology of a scientific study.

Facts: This case concerned statements made by Philip Morris International Inc. ("PMI") regarding PMI's smoke-free tobacco products, which are marketed as safer than traditional, combustible cigarettes. PMI conducted scientific studies to support an application to the FDA to obtain permission to market those products as either "reduced exposure" tobacco products (*i.e.*, a tobacco product that reduces exposure to harmful chemicals) or "modified risk" tobacco products (*i.e.*, a tobacco product that reduces the risk of tobacco-related diseases).

Plaintiffs PMI stockholders brought claims under sections 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5 against PMI and several current and former PMI executives, asserting among other things that PMI's statements concerning those studies were false or misleading. After a series of amendments to the pleadings and briefing, the district court dismissed the Plaintiffs' claims, finding that Plaintiffs had failed to adequately plead the falsity of the statements as well as scienter.

Plaintiffs appealed the district court's decision to the Second Circuit, which affirmed the dismissal of all of Plaintiffs claims on the grounds that Plaintiffs had failed to plead a material misrepresentation or omission. In the decision, the Second Circuit addressed two issues that it had not previously resolved.

The first issue was whether a "securities-fraud defendant's statements that its scientific studies complied with a methodological standard that is published and internationally recognized, but stated in general and inherently subjective terms, [are] properly analyzed as statements of opinion, rather than fact." *Id*. at 414. PMI had represented that its studies were "conducted according to Good Clinical Practice ("GCP"), an international quality standard for clinical trials. Plaintiffs alleged that because GCP is a technical term, investors understood PMI's statement concerning its adherence to GCP to constitute verifiable facts about the studies that could be relied upon. *Id*. at 418-19. The Court rejected this argument, holding that PMI's statement was an inactionable statement of opinion because GCP is "general and often inherently subjective" and therefore any representation that PMI complied with it must be understood as opinion, and not properly characterized as statements of fact. *Id*.

The second issue was whether "a securities-fraud defendant's challenged statements that express an interpretation of scientific data that is ultimately endorsed by the" FDA, are per se reasonable as a matter of law. *Id*. at 414. PMI had represented that its studies had generated evidence that its smoke-free tobacco products had "the potential to reduce the risk of smoking related diseases in adult smokers who switch to it completely." *Id*. at 420. The Second Circuit held that because the FDA had ultimately concluded that PMI "had demonstrated that . . . measurable and substantial reduction in morbidity or mortality among individual tobacco users [was] reasonably likely in subsequent studies," and because the statements that PMI had made were consistent with this conclusion, they were per se reasonable and not affirmatively misleading. *Id*. at 421.

Key Takeaways: This decision provides support for securities fraud defendants to assert defenses based on the lack of falsity of statements, particularly statements of opinion under the Supreme Court's decision in *Omnicare, Inc. v. Laborers District Council Construction Industries Pension Fund*, 575 U.S. 175 (2015). The decision will be particularly important for those defendants who may be able to rely on interpretations by the FDA or other regulatory agencies that are consistent with a defendant's own statements concerning studies or interpretations of data.

Other Regulatory Updates

Antitrust Agency Update

Federal Trade Commission at Full Strength: The Federal Trade Commission is finally restored to bipartisan balance following the confirmation of President Biden's two Republican members on March 7, 2024. The FTC is headed by five Commissioners nominated by the President and confirmed by the Senate, each serving a seven-year term. No more than three Commissioners can be of the same political party. The FTC has not had a sitting Republican Commissioner in nearly a year since Christine Wilson resigned in April 2023 with her so-called "noisy exit," publically accusing the agency leadership of ignoring ethical considerations and established antitrust law.

Republican Commissioner Noah Phillips had resigned in October 2022. Utah Solicitor General Melissa Holyoak and Virginia Solicitor General Andrew Ferguson, both former aides of Senator Mitch McConnell, join the FTC as the Republican balance to the three sitting Democratic Commissioners, including Chair Lina Khan. Initial hearings on the nominations took place in September, though confirmations were put on hold in December by Senator Josh Hawley. The Senate also confirmed a new term for Democratic Commissioner Rebecca Slaughter. Though the confirmation of the Republican nominees does not alter the balance of power at the FTC given the Democratic-majority, many view the addition of two Commissioners as a much-needed dissenting voice to Chair Khan and the Democratic majority's aggressive enforcement and policy agenda.

Antitrust Enforcement Funding: On March 11, 2024, President Biden proposed increasing the budgets of the Department of Justice Antitrust Division by 23% to $288 million and the Federal Trade Commission's Bureau of Competition by 28% to $273 million for 2025. The administration said the increases would bolster the agencies' efforts to promote competition, reduce costs and raise wages. These requests come a few days after President Biden signed into law a spending package that raised the DOJ Antitrust Division's budget by only $8 million for 2024, where it had projected the Antitrust Division would need $33.5 million in additional funding to maintain current staffing levels. Funding for the FTC in 2024 remains up in the air as the spending package enacted only addressed the DOJ Antitrust Division. Critics slammed President Biden's 2025 proposals for not reflecting his statements that antitrust enforcement is a key pillar of his economic agenda. Many critics believe the move undermines the passage of Senator Amy Klobuchar's Merger Filing Fee Modernization Act (the "MFFMA"). The MFFMA, passed as an amendment to the Consolidated Appropriations Act of 2023, seeks to provide increased funds to the DOJ Antitrust Division by significantly raising filing fees for mergers notified under the Hart-Scott-Rodino Act. With fewer resources, many critics believe the DOJ will be forced to triage its caseload while the budget contributes to continuous problems with staffing levels. The DOJ may also have to prioritize merger reviews as these cases operate on a strict deadline, leaving less resources for the DOJ's civil and criminal conduct investigation efforts.

Nasdaq Reverse Stock Split Clarification

As discussed in our **November Public Company Watch**, Nasdaq recently amended its listing rules regarding the timeframe and requirements for notification and disclosure related to reverse stock splits, which, among other things, require listed companies to submit a complete Company Event Notification Form to Nasdaq by 12 pm ET five business days prior to the proposed market effective date of the reverse stock split. On March 14, 2024, Nasdaq adopted related clarifying rule amendments and changes to the Company Event Notification Form. In particular, the amendments (1) highlight that Nasdaq will halt the trading in a security of any issuer that effects a reverse stock split without following the applicable listing rules and (2) clarify that the issuer must (i) obtain a DTC eligible CUSIP prior to submitting the form and (ii) obtain shareholder approval for the reverse stock split prior to submitting the form. Given the lead-time required to obtain DTC eligibility for a CUSIP as well as the shareholder meeting process, reverse stock split timelines should be adjusted accordingly

Biden Administration Announces Program Restricting "Countries of Concern" from Accessing Certain U.S. Sensitive Data

On February 28, 2024, the Biden Administration issued a new **"Executive Order on Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern"** (the "EO"). The U.S. Department of Justice ("DOJ") concurrently issued a **fact sheet** ("DOJ Fact Sheet") announcing a forthcoming Advanced Notice of Proposed Rulemaking ("ANPRM") (unofficial version available **here**) that will provide additional clarity on the scope of the EO and its implementation. Modeled on existing economic sanctions programs administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the new program is expected to impose novel restrictions and additional diligence/compliance requirements on U.S. businesses dealing in bulk "sensitive personal data" and/or U.S. Government-related data. The President's action marks a significant expansion of the U.S. Government's authority to prohibit or condition foreign persons' access to U.S. bulk sensitive personal data or U.S. Government-related data and is intended to build upon and supplement other existing authorities, such as case-by-case reviews of transactions by the Committee on Foreign Investment in the United States (CFIUS), Team Telecom and the Commerce Department under its "ICTS Program." A summary of the key aspects of the new program follows below:

- **Program Summary**: As contemplated in the EO and DOJ Fact Sheet, the new program will prohibit or impose restrictions on "U.S. person" data transactions involving the transfer of U.S. bulk "sensitive personal data" or certain U.S. Government-related data to "countries of concern," or to "covered persons" subject to such countries' jurisdiction. DOJ is expected to identify data brokerage transactions and certain genomic-data transactions involving the transfer of data to such jurisdictions and persons as "Prohibited Transactions" due to their inherent sensitivity. Another subset of transactions involving vendor, employment and investment agreements may be permitted subject to compliance with certain predefined security requirements (e.g., organizational cybersecurity posture requirements, physical and logical access controls, data masking and minimization, use of privacy-preserving technologies) to be established by the Cybersecurity and Infrastructure Security Agency within the U.S. Department of Homeland Security to mitigate national security concerns regarding data access by such countries or persons.

Some data transactions are expected to be exempted from the new program, including (i) transactions "ordinarily incident to and part of" financial services, payment processing and regulatory compliance; (ii) transactions "ordinarily incident to and part of" ancillary business operations within multinational U.S. companies; (iii) activities of the U.S. Government (including contractors, employees and grantees) and (iv) transactions required or authorized by federal law or international agreements. Purely domestic transactions between U.S. persons are not expected to be within the scope of the new regime. Data transactions involving foreign persons that are not "covered persons" and do not relate to "countries of concern" will generally be permissible on the condition that the foreign person agrees not to resell or give access to such persons or jurisdictions.

- **Persons Subject to the New Program**: The DOJ Fact Sheet contemplates that the ANPRM will identify the following jurisdictions as initial "countries of concern": China (including Hong Kong and Macau), Russia, Iran, North Korea, Cuba and Venezuela. The EO authorizes the U.S. Attorney General to identify additional jurisdictions as "countries of concern" in consultation with the U.S. State and Commerce Departments.

  "Covered persons" is expected to be defined to include (i) entities owned by, controlled by, or subject to the jurisdiction or direction of a "country of concern," (ii) foreign persons who are employees or contractors of such entities or "countries of concern" and (iii) foreign persons primarily resident in "countries of concern." The EO also authorizes DOJ to establish a non-exhaustive list of specific entities or individuals designated as "covered persons" subject to the new program.

  "U.S. persons" subject to the new prohibitions and restrictions are expected to include U.S. citizens and lawful permanent residents, persons admitted to the United States as a refugee or granted asylum, entities organized solely under U.S. law or jurisdiction and persons physically located in the United States. Such persons are expected to fall outside the definition of "covered persons," except to the extent they have been specifically and publicly designated by DOJ as acting on behalf of a "country of concern."

- **Types of Data Subject to the New Program**: The new program will regulate specified categories of data transactions involving "sensitive personal data" that exceed certain bulk volumes. Categories of "sensitive personal data" expected to be covered include (i) certain categories and combinations of "covered personal identifiers" (i.e., a subset of personally identifiable information to be defined that is reasonably linked to and used to identify an individual), (ii) precise geolocation data, (iii) biometric identifiers, (iv) human genomic data, (v) personal health data and (vi) personal financial data. Data that are publicly available, personal communications and expressive information such as videos, artwork or publications will also fall outside the scope of the new program, similar to exemptions available under IEEPA-based OFAC sanctions programs.

  Certain U.S. Government-related data is also expected to be subject to the new regime. "Sensitive personal data" that is linked or linkable to current or recent former U.S. Government employees and contractors (including members of the U.S. military) is expected to be covered, as well as geolocation data that is linked or linkable to certain sensitive U.S. Government locations to be identified on a public list, regardless of the volume of such data provided.

- **Licensing Regime**: The ANPRM is expected to contemplate the establishment of a licensing process. Similar to OFAC sanction programs, DOJ is expected to issue "general licenses" exempting certain data transactions from the scope of the regime. The ANPRM will also likely include a "specific license" regime that will allow transaction parties an opportunity to seek authorization for a transaction that would otherwise be prohibited under the regulations. Parties are also expected to be able to request advisory opinions regarding the application of the regulations to specific transactions. Noncompliance will likely be subject to civil and criminal penalties, and DOJ will likely consider, in any determination of penalty, the adequacy of the U.S. person's compliance program.

Apart from this new regulatory regime, the EO also directs the Departments of Health and Human Services, Defense and Veterans Affairs to "help ensure that Federal grants, contracts, and awards are not used to facilitate" access to sensitive health data by countries of concern, including "via companies located in the United States." In addition, the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (colloquially, "Team Telecom," a DOJ-led, CFIUS-like group of Executive Branch agencies that review foreign investment in U.S. telecommunications companies) will "prioritize review of existing licenses for submarine cable systems" in light of the EO and ANPRM. This is consistent with developments over the past several years that see Team Telecom revisiting previously approved transactions, a departure from its traditional role of exercising authority only in the context of a transfer of control of a business or asset.

Key Takeaway: DOJ has until August 26, 2024 to issue its proposed regulations implementing the regime. U.S. data brokers and other companies should consider assessing their exposure to the types of "sensitive personal data" that are expected to be subject to the regime, and review their existing customer bases to identify existing customers that may be located or controlled by "countries of concern." As the rules take shape, companies may also want to examine data flows to understand whether any large flows of data to "countries of concern" fit within the anticipated exceptions. While relevant and potentially impactful to any business offshoring personal data from the U.S., these rules may have particular relevance to public companies in the context of broadly increasing scrutiny on public company data privacy and cybersecurity practices in recent years.

SEC Rulemaking Tracker

Recently Adopted Rulemaking		
Climate Change	Comprehensive climate-change-related disclosure overhaul impacting registration statements and periodic reports and related notes to financial statements	Adopted March 6, 2024, effective 60 days after publication in the Federal Register Compliance will be required on a rolling basis, depending on disclosure item and filer type. The first disclosure items (including most disclosure called for by the new Regulation S-K and Regulation S-X items) will be required for large accelerated filers for annual disclosures related to the fiscal year beginning 2025 and the last disclosure required will be phased in related to annual disclosure for the fiscal year beginning 2033. Issuers will be required to comply with the new rules in registration statements that are required to include financial information for the full fiscal year in which the annual disclosure is required.
SPACs	Comprehensive changes overhauling regulation of SPAC structure	Adopted January 24, 2024, effective July 1, 2024 Note that these rules also have implications for other business combination transactions, including reverse mergers.
Modernization of Beneficial Ownership Reporting	Significant amendments to modernize the filing deadlines for initial and amended beneficial ownership reports on Schedules 13D and 13G	Final rule effective as of February 5, 2024 Filers will have until September 30, 2024 to comply with the revised Schedule 13G filing deadlines and until December 18, 2024 to comply with the structured data requirements.
Cybersecurity and Risk Governance	Amendments requiring current reporting of material cybersecurity incidents and annual disclosure related to an issuer's cybersecurity risk management system, including the board's and management's role therein	Final rule adopted July 26, 2023, effective September 5, 2023 Compliance with current reporting requirements for filers other than SRCs as of December 18, 2023, and as of June 15, 2024 for SRCs. Compliance with annual reporting requirements in annual reports for fiscal years ending on or after December 15, 2023. Issuers must comply with Inline XBRL tagging requirements in current reports as of December 18, 2024 and for annual reports for fiscal years ending on or after December 15, 2024.

10b5-1 Plans and Insider Trading	Series of changes revamping conditions to be met in order for a person to rely on the affirmative defense from insider trading available under Rule 10b5-1(c)(1), requiring related quarterly and annual disclosures and impacting Form 4 / 5 filings	Amendments to Forms 4 / 5 effective as of April 1, 2023 Compliance with the new disclosure requirements generally required in the first filing that covers the full fiscal period that starts on or after April 1, 2023 (or after October 1, 2023 for SRCs) Clarified in C&DI to mean, for December 31 fiscal year-end companies (that are not SRCs): ▪ Quarterly disclosures in Form 10-Q for period ended June 30, 2023 ▪ Annual disclosures in Form 10-K or 20-F for the fiscal year ended December 31, 2024 ▪ Proxy / Information Statement disclosures for first annual meeting for election of directors after the completion of the first full fiscal year beginning on or after April 1, 2023
Pending Rulemaking[1]		
Rule 14a-8	Potential amendments regarding updating bases for exclusion of shareholder proposals under the substantial implementation exclusion, the duplication exclusion and the resubmission exclusion	Awaiting final action; pushed back until April 2024
EDGAR Filer Access and Account Management	Comprehensive technical changes to EDGAR referred to as EDGAR Next	Awaiting final action; no timeline provided
Anticipated Rulemaking		
Corporate Board Diversity	Potential rulemaking requiring disclosure regarding diversity of board members and director nominees	Pushed back again until October 2024
Human Capital Management	Additional rulemaking enhancing disclosures regarding human capital management (beyond what is already required by an issuer's Business section)	Pushed back again until April 2024
Reg D and Form D Improvements	Updates to Reg. D exemption for private placements, including to definition of "accredited investor" and Form D	Pushed back again until April 2024
Revisiting Definition of "Held of Record"	Revisiting definition of "held of record" used in Section 12(g) of Exchange Act (i.e., for determining whether an issuer will need to register its equity securities with the SEC)	Pushed back again until April 2024

1 Note that the projected dates for the pending and anticipated rulemaking are based on the SEC's most recent Regulatory Flexibility Agenda, which was released by the U.S. Office of Information and Regulatory Affairs on December 6, 2023.

Rule 144 Holding Period	Potential amendments to resale safe harbor for restricted / control securities	Pushed back again until October 2024
Incentive-Based Compensation Arrangements	Potential re-proposal of regulations regarding incentive-based compensation practices at certain financial institutions with over $1 billion in total assets	Anticipated release of re-proposed rule April 2024

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