PAUL HASTINGS

January 2024

Public Company Watch

Key Issues Impacting Public Companies

SEC Spotlight

Navigating the 2023 20-F Season: A Guide for Foreign Private Issuers

As we head into the New Year, annual reporting season for FPIs is just around the corner. FPIs are required to file an annual report on Form 20-F with the SEC within four months after the end of their fiscal year (or until April 30, 2024).

Annual reports on Form 20-F provide FPIs an opportunity to communicate with investors, regulators, and other stakeholders. Therefore, it is important to prepare it carefully and accurately, and to comply with the applicable disclosure requirements and standards. Over the course of 2023, there have been a number of new or revised disclosure requirements that FPIs should be aware of. For an overview of those updates, as well as some practical tips and reminders for the filing process, please see our **client alert**.

New SEC Guidance on Extension of Confidential Treatment

On January 8, 2024, the SEC updated its guidance related to confidential treatment applications submitted pursuant to Securities Act Rule 406 and Exchange Act 24b-2, CF Disclosure Guidance: Topic No. 7. The guidance was initially put forth in December 2019.

Background: Rules 406 and 24b-2 provide that an issuer may apply to the SEC objecting to the disclosure of confidential information that would otherwise be required to be filed. Historically, submitting a confidential treatment request was the only way of omitting confidential information from filings; however, amendments to Item 601 of Regulation S-K in 2019 and 2020 enable issuers to omit portions of exhibits or exhibits from filings in certain circumstances, thus drastically cutting down on confidential treatment requests. The SEC's guidance applies to issuers who elect to utilize the traditional confidential treatment request process to protect their confidential information (either by choice or because another exemption is not available) and includes information regarding how to apply, materiality of omitted information, excessive omissions, the division's review process and the process for what to do when a confidential treatment order is nearing expiration.

Overview of Changes: In the new version of CF: Disclosure Guidance: Topic No. 7, the SEC noted that the guidance has generally been updated, but that the updates are focused on issuers' options when a confidential treatment request is expiring. Generally, if a confidential treatment order is about to expire an issuer has three options:

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- Refile the unredacted exhibit, thereby no longer treating the information as confidential;
- Transition to the process set forth in Item 601(b)(10)(iv) of Regulation S-K and the parallel rules to keep the information confidential; or
- Seek an extension of the confidential treatment order.

The first option is straight-forward. To the extent that a contact remains material, the issuer would simply file an unredacted version. However, the SEC anticipates that most issuers will avail themselves of the second option, which would require them to refile a redacted form of the material contract with the appropriate legend and follow the other procedural requirements of Item 601(b)(10)(iv) (or the parallel rule). Under this option, the SEC guides that issuers have until their first Exchange Act report following the expiration of the confidential treatment order to refile the redacted agreement. The final option—seeking an extension of the confidential treatment order—distinguishes between (1) if the order was issued less than three years ago, and (2) if the order was issued more than three years ago. In the first instance, issuers are able to email a completed one-page short-form extension application accessible **here** to the SEC in order to seek extension. To the extent that the order was initially issued more than three years ago, issuers are not able to avail themselves of the short-form extension application, but must instead utilize the long-form extension application, which requires: "all the information and documents that are required for initial confidential treatment applications"; copies of the original confidential treatment order, the unredacted agreement and any related correspondence with the SEC staff; and certain written affirmations as to the veracity of the information set forth in the application. The long-form application must be submitted to the SEC well in advance of the confidential treatment order's expiration in order to enable the staff to appropriately review and approve.

Takeaway: Issuers that have upcoming confidential treatment order expirations should engage with counsel early to discuss the available options for continued confidentiality, if needed. While there are ample choices for proceeding in an efficient or expedited manner, if the issuer elects to seek extension of its confidential treatment order, it could require ample lead-time in order to obtain.

Activism Update

Delaware Chancery Upholds Rejection of Advance Notice; Strikes Down Certain Bylaw Amendments

In **Kellner v. AIM Immunotech Inc., et al.**, Vice Chancellor Will of the Delaware Court of Chancery upheld the company's rejection of an advance notice of nomination finding that the Board acted reasonably and equitably in rejecting the notice and that it did not breach its fiduciary duties in enforcing valid advance notice bylaws. At the same time, in applying an enhanced scrutiny standard of review, the court found that four provisions of the bylaws were invalid as they were disproportionate responses to any threatened corporate objectives. The case shows that Delaware courts will uphold a company's rejection of an advance notice of nomination that does not comply with valid bylaw provisions, while at the same time showing that a court may blue-pencil a company's bylaws by finding certain provisions invalid, thus offering lessons for drafting advance notice bylaws.

The court upheld the rejection of the advance notice of nomination finding that it obscured obvious arrangements or understandings pertaining to the nomination that were required to be disclosed pursuant to the company's advance notice bylaws. Under the company's so-called agreements, arrangements, and understandings provision (the "AAU provision"), a nominating stockholder is required to disclose "all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made".[1] The advance notice of nomination stated that before July 2023 "no decision was made [by any of the three group members] to work together to advance potential nominations or otherwise take any action with respect to the Company." The court found that this statement was false given that there was evidence that well before July the three group members took measures to prepare for nominations and a proxy contest. The omission and misrepresentation of meaningful AAUs resulted in the court upholding the rejection of the advance notice. In doing so, the court also observed that the advance notice failed to comply with two additional provisions of the advance notice bylaws.[2]

While the court upheld the rejection of the advance notice of nomination, it also decided to blue-pencil the bylaws adopted in March 2023 finding that four provisions challenged by the investor were invalid and two were valid. In doing so, the court applied an enhanced scrutiny standard of review under *Unocal* with sensitivity to the stockholder franchise that integrates the spirit of *Blasius*

1 Note that the court analyzed whether the advance notice met the requirements of the AAU provision of the 2016 bylaws. As discussed below, the court found the 2023 AAU provision invalid, but reverted to assessing whether the notice complied with the 2016 AAU provision.

2 These provisions were (1) the so-called First Contact Provision that required disclosure of "the dates of first contact between a nominating stockholder and/or [any Stockholder Associated Person], on the one hand, and the Stockholder Nominee, on the other hand" regarding the company or the Board nominations and (2) the provision providing that the D&O questionnaires submitted by nominees be certified as accurate.

and *Schnell.*[3] In addition to analyzing these six provisions, the court noted that neither the investor nor the court would quibble with the amendments to the bylaws to address Rule 14a-19 (the universal proxy rule) and to cohere with the DGCL. A summary of the court's analysis on each of the six bylaw provisions at issue in the case and our related commentary is set forth below.

Agreements, Arrangements, and Understandings Provision

- The 24 month lookback period in the AAU provision was found to be permissible. Public companies may want to add a temporal reference to AAU bylaw provisions to eliminate any ambiguity regarding the time period to which such provision applies.
- The AAU provision's requirement to disclose AAUs with persons acting in concert with the nominating stockholder and any Stockholder Associated Person (SAP) were found to be invalid. In striking down the provision, the court stated: *"In the context of the AAU Provision, a nominating stockholder would need to disclose any AAUs that an SAP had with a holder, nominee (and his or her immediate family members, affiliates, or associates), persons acting in concert with any SAP, holder, nominee (and family, affiliates, or associates), and "any other person or entity. It is here that the AAU Provision goes off the rails, undermining an otherwise reasonable and appropriate bylaw. Read literally, the interplay of the various terms—"acting in concert," "Associate," "Affiliate," and "immediate family" within the SAP definition, and SAPs within the AAU Provision—causes them to multiply, forming an ill-defined web of disclosure requirements."* Given the court's ruling and other related legal developments regarding acting in concert provisions, public companies may want to revisit their advance notice bylaws to examine whether they contain references to persons acting in concert or to Stockholder Associated Persons.

Consulting/Nomination Provision

This provision requires *"disclosure of AAUs between the nominating stockholder or an SAP, on the one hand, and any stockholder nominee, on the other hand, regarding consulting, investment advice, or a previous nomination for a publicly traded company within the last ten years". In striking down the provision, the court stated: "The provision not only suffers from the same problem as the AAU Provision insofar as it includes SAPs. It also imposes ambiguous requirements across a lengthy term." … "The Consulting/Nomination Provision does not stop with the present nomination—or even AAUs about AIM. It implicates a decade of AAUs (including "advice" on "potential investments") involving other publicly traded companies as well."* The court's analysis regarding this provision is a reminder that advance notice bylaw provisions need to drafted with absolute clarity and should not be overreaching.

The Known Supporter Provision

This provision requires the nominator and nominees to list all known supporters of the nomination.

- In striking down the provision, the court stated that *"the Known Supporter Provision here seeks disclosure of any sort of support whatsoever, including that of other stockholders known by SAPs to support the nomination. The limits of this provision are ambiguous—both in the terms of the types of support and supporters one must disclose."*
- The court did indicate that such provisions if drafted differently may be enforceable stating that: *"Had the Board crafted a bylaw mandating the disclosure of known supporters providing financial support or meaningful assistance in furtherance of a nomination, it might have taken a legitimate approach to ensuring adequate disclosure. Instead, it overreached."* In this regard, the court acknowledged that: *"In CytoDyn, Vice Chancellor Slights observed that a bylaw mandating the disclosure of known financial supporters elicited information that is "vitally important" to voting stockholders"*. Companies that have these provisions should review them to determine whether they are sufficiently limited in scope such that they would be enforceable or whether they are overly broad and should be revised.

The Ownership Provision

This provision requires a nominating stockholder to disclose, among many other things, a Holder's ownership in AIM stock (including beneficial, synthetic, derivative, and short positions). The requirements extend to SAPs, immediate family members, and persons acting in concert with a nominee. In striking down the provision, the court first acknowledged that such a provision may be legitimate and then explained why the company's provision was not: *"A provision requiring a stockholder to disclose such information seems perfectly legitimate. The problem for AIM is that the Ownership Provision as drafted sprawls wildly beyond this purpose. As one example, it requires the disclosure of "legal, economic, or financial" interests "in any principal competitor" of AIM. The term "principal competitor" is undefined, creating ambiguity. As another example, it calls for disclosure of "[a]ny performance-related fees that each Stockholder Associated Person is entitled to, including interests held by family members."* Public companies should revisit the ownership provisions in their advance notice bylaws in light of the court's interpretation of this provision. In particular, to the extent the advance notice bylaws have a reference to disclosure regarding competitors, a company should consider providing a definition of such term.

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3 In applying this standard of review, the court cited to the Delaware Supreme Court's decision in *Coster (Coster v. UIP Cos., Inc., 300 A.3d 656 (Del. 2023).*

The First Contact Provision

This provision requires disclosure of the dates of first contact among those involved in the nomination effort. The court upheld this provision. The investor argued that it is an unusual provision, but the court found that unusualness is not the test and that this provision was tailored to advance a proper objective unique to the company. While this provision is relatively uncommon, companies should feel comfortable including such a provision in their advance notice bylaws.

The D&O Questionnaire Provision

This provision requires completion of a D&O questionnaire. The court found the provision valid and declined to determine whether five business days is a reasonable time period for the company to send the form of D&O questionnaire to the nominating stockholder. Public companies should feel comfortable having an advance notice provision requiring stockholder nominees to complete a D&O questionnaire.

Limited ISS Updates for 2024 Proxy Season

In late December 2023, proxy advisory firm Institutional Shareholder Services (ISS) released its 2024 Proxy Voting Guidelines. The new guidelines apply to shareholder meetings occurring after February 1, 2024. In a departure from previous years and from Glass Lewis's updated 2024 Proxy Voting Policy Guidelines discussed in our client alert accessible here, ISS only made one update to their US Proxy Voting Guidelines regarding severance agreements for executives and golden parachute arrangements. Under the new policy, ISS will vote on a case-by-case basis on all shareholder proposals requiring executive severance arrangements be submitted for shareholder ratification. The policy fine-tunes the considerations ISS will take into account when making their voting recommendation as well as aligns the factors taken into account when considering termination severance arrangements and golden parachute severance arrangements.

Other Regulatory Updates

NYSE Rule Change Will Make it Easier for Passive Substantial Stockholders to Invest in NYSE-Listed Companies

The NYSE proposed rule change providing relief for NYSE-listed companies selling shares at a discount to substantial shareholders previewed in the October edition of the Public Company Watch has been approved by the SEC. The initial proposed rule was amended by the NYSE on December 21, 2023 and approved by the SEC on December 26, 2023.

Historically, pursuant to Section 312.03(b)(i) of the NYSE listing standards, NYSE-listed companies have been limited in the number of shares of common stock (and securities convertible or exercisable into common stock) they can sell to related parties, including substantial security holders, without (1) selling the shares for at least a minimum price or (2) obtaining shareholder approval. This one percent of the number of shares of the company's common stock or one percent of the company's voting power prior to the issuance limitation has made it challenging for companies to raise money through existing substantial security holders and foreclosed them from enjoying the accompanying benefits of low transaction costs and timely execution. Nasdaq does not have a parallel limitation.

Under the new rule, the NYSE will distinguish between related parties who are empowered to influence the governance and management of a listed company (e.g., an officer, director or control person of the company) and substantial security holders that are passive in nature, who the SEC believes do not pose the risk of conflicts of interest that the rule is intended to prevent. Utilizing a new defined term—"Active Related Party"—the sale restrictions set forth in Section 312.03(b)(i) will be limited to "a director, officer, controlling shareholder or member of a control group or any other substantial security holder of the company that has an affiliated person who is an office or director of the company." Accordingly, below minimum price sales in excess of one percent to substantial security holders that do not fit within the aforementioned definition of "Active Related Party" will no longer require prior shareholder approval pursuant to Section 312.03(b)(i); however, all other NYSE shareholder approval rules and limitations still apply (e.g., including Section 312.03(b)(ii) and the 20% rule). Note that for purposes of making the "Active Related Party" determination, a "group" will follow the analysis set forth in Section 13(d)(3) or Section 13(g)(3) of the Exchange Act and "control" will have the same meaning as set forth in Exchange Act Rule 12b-2.

FTC and DOJ issue Final Merger Guidelines

On December 18, 2023, the FTC and DOJ jointly issued the 2023 Merger Guidelines, which describe the factors and frameworks the agencies utilize when reviewing mergers and acquisitions. The first draft was issued in July, and in the following months the agencies hosted several workshops and received over 30,000 comments from "consumers, workers, academics, interest organizations,

attorneys, enforcers, and many others." While these guidelines contain significant updating from the draft guidelines released on July 19, 2023, the overall direction is largely the same. In several places, the updates involve clarifying wording, adding recent case citations (in particular the 5th Circuit opinion regarding the Illumina/Grail transaction), and replacing more definitive language with language that would allow more fact-specific inquiry.

Further solidifying the agencies' expanded merger enforcement efforts, the final guidelines maintain the lower market share concentration levels as the July version, opening more transactions to scrutiny and potential challenge. Whether courts will look to the updated Merger Guidelines for persuasive authority in litigated merger challenges, as they have with past iterations, remains to be seen. However, more important for many deals is the increasingly broad lens through which the DOJ and FTC intend to consider potential anticompetitive effects. Even deals that do not find their way to the courtroom may face the increased burden of addressing the potential harms addressed in the Merger Guidelines, often seeking to accomplish the difficult task of proving a negative (i.e., the lack of an antitrust concern).

The update to the merger guidelines does not otherwise impact the current HSR notification process. The FTC proposed significant changes to the pre-merger notification program under the HSR Act last summer. See client alert here for a discussion of those changes. While the proposed changes to the HSR process are still pending, we expect the final version to be issued by the middle of the year. Additionally, we expect the thresholds for mandatory filing under the HSR Act, which are adjusted annual for inflation, to be revised within the next month.

Please see our **client alert** for additional discussion of the Merger Guidelines.

New U.S. Department of Labor Rule Regarding Independent Contractor Classification

On January 10, 2024, the U.S. Department of Labor ("DOL") published a final rule addressing when employers can classify workers as independent contractors under the Fair Labor Standards Act ("FLSA"). The new final rule, which largely aligns with the proposed rule the DOL released in October 2022, replaces a prior iteration issued in 2021 that had focused on two "core factors," *i.e.*, the nature and degree of control over the work and the worker's opportunity for profit or loss, that were treated as the most probative and carried greater weight in the analysis.

The new final rule returns to a six-factor analysis that examines the totality of circumstances of the "economic reality" of the relationship between a potential employer and a worker, which has been previously used by courts. Under the new final rule, the six factors, none of which is presumed to carry more weight than another, are the following:

- opportunity for profit or loss depending on managerial skill;
- investments by the worker and the potential employer;
- the degree of permanence of the work relationship;
- the nature and degree of control;
- the extent to which the work performed is an integral part of to the potential employer's business; and
- the worker's skill and initiative.

The Final Rule takes effect March 11, 2024. Employers should evaluate their existing and future worker relationships and independent contractor agreements in light of the DOL's new rule.

Biden Administration Expands OFAC's Secondary Sanctions Authority to Target Persons Supporting Russia's Military-Industrial Base

Summary: On December 22, 2023, the Biden Administration issued **Executive Order 14114** "Taking Additional Steps with Respect to the Russian Federation's Harmful Activities" ("EO 14114"). Of particular relevance to foreign financial institutions ("FFIs"), and domestic financial institutions that provide services to or maintain accounts on behalf of FFIs, EO 14114 expands the scope of so-called "secondary sanctions" that may be imposed by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") on FFIs OFAC determines to be dealing with persons operating in the Russian Federation's "military-industrial base" or for supporting any "significant transaction or transactions" involving Russia's military-industrial base. This new secondary sanctions authority materially increases financial institutions' due diligence and compliance obligations with respect to their customers' activities, even if a given transaction has little to no direct nexus to the U.S. financial system and the FFI in question is not located in Russia. OFAC concurrently released a related **compliance advisory** and guidance (FAQs **1146-1157**, and **973, 1070, and 1126**) clarifying the scope of the new authority.

Background and Overview of Changes: EO 14114 builds upon certain pre-existing sanctions authorities under OFAC's Russia sanctions program to further deter FFIs from engaging with or supporting persons involved with Russia's military-industrial base, with the intent to further degrade Russia's military industrial capacity and dis-incentivize foreign persons' support of evasion of U.S. sanctions targeting Russia. Specifically, EO 14114 amends **Executive Order 14024** "Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation" ("EO 14024") to authorize OFAC to impose certain sanctions on FFIs that:

- conduct or facilitate "any significant transaction or transactions" on behalf of persons designated by OFAC under EO 14024 for operating in sectors that support Russia's military-industrial base, including Russia's technology, defense and related material, construction, aerospace, and manufacturing sectors ("Specified Sectors"); and
- conduct or facilitate "any significant transaction or transactions," or provide any service, "involving" Russia's military-industrial base, including the direct or indirect sale, supply, or transfer of **certain "dual-use" manufacturing inputs and technologies** that can be used and are critical to support the Russian war effort against Ukraine ("Specified Items").

EO 14114 authorizes OFAC to sanction FFIs by (i) prohibiting the opening or maintenance of (or imposing conditions on) correspondent or payable-through accounts in the United States on behalf of such FFIs, or (ii) the imposition of "blocking sanctions" against such FFIs. FFIs that cannot open or maintain correspondent or payable-through accounts with U.S. financial institutions will effectively be unable to access the U.S. financial system. U.S. persons (including U.S. financial institutions) are required to seize and report to OFAC all property and interests in property of FFIs that are subject to EO 14114's "blocking sanctions" that are located in the United States or in their possession or control. EO 14114 provides OFAC broad authority in determining whether a transaction or transactions are "significant" under the totality of the facts and circumstances. "Foreign financial institutions" are similarly broadly defined under EO 14024 and captures non-banking entities, including securities and foreign exchange dealers, money service and credit card businesses, investment companies, and trust and insurance companies, among others.

Timing: OFAC's authority to impose sanctions on FFIs for engaging in such transactions or supporting Russia's military-industrial base was effective upon the issuance of EO 14114 on December 22, 2023. OFAC concurrently issued **General License No. 84**, which temporarily authorizes U.S. financial institutions to engage in wind-down transactions for the purpose of and necessary for the closing of an FFI's correspondent or payable-through accounts held with U.S. institutions within 10 days following an FFI's designation under EO 14024.

Takeaways: OFAC's related compliance advisory highlights OFAC's expectations for FFIs' customer due diligence procedures and compliance controls. To mitigate their risk of being subject to secondary sanctions under EO 14024, FFIs are expected to undertake a detailed review of their customer base to determine if any of their customers operate in Specified Sectors of the Russian economy or are involved in the sale, supply, or transfer of Specified Items to Russia or jurisdictions previously identified as posing a high risk of sanction evasion to Russia. OFAC also expects FFIs to inform customers that their accounts may not be used in support of Specified Sectors or transactions involving Specified Items, obtain attestations or certifications from customers that they do not engage in such activities, and to take appropriate mitigation measures for customers engaged in high-risk activities or who fail to provide adequate information to confirm that they do not engage in such activities. Although U.S. financial institutions themselves may not be subject to secondary sanctions under EO 14024, they should also undertake due diligence with respect to their FFI customers to assess their customers' risk of being subject to secondary sanctions under EO 14024 and their attendant sanctions compliance obligations that would arise from such action.

SEC Rulemaking Tracker

Recently Adopted Rulemaking		
Modernization of Beneficial Ownership Reporting	Significant amendments to modernize the filing deadlines for initial and amended beneficial ownership reports on Schedules 13D and 13G	The rules will be effective 90 days after publication in the Federal Register. 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
Share Repurchase Modernization	Amendments requiring quarterly tabular disclosure of daily share repurchases and related narrative disclosures	Vacated by Fifth Circuit on December 19, 2023
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

Compensation Clawbacks	Requires adoption of / compliance with clawback policy in connection with erroneously awarded incentive-based compensation	Effective October 2, 2023, meaning issuers will be required to include disclosures in relevant SEC filings after that date and to adopt and adhere to compliant clawback policies as of December 1, 2023
Pending Rulemaking[4]		
Climate Change	Comprehensive climate-change-related disclosure overhaul impacting registration statements and periodic reports and related notes to financial statements	Awaiting final action; pushed back again until April 2024
SPACs	Comprehensive changes overhauling regulation of SPAC structure	Awaiting final action; pushed back again until April 2024
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
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 instructions with over $1 billion in total assets	Anticipated release of re-proposed rule April 2024

4 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 June 13, 2023.

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