PAUL HASTINGS

August 2023

Public Company Watch

Key Issues Impacting Public Companies

SEC Spotlight

The SEC Adopts Cybersecurity Disclosure Regime for Public Companies

On July 26, 2023, the SEC adopted enhanced disclosure requirements regarding cybersecurity risk management, strategy, governance and incident reporting for public companies. The SEC first released the proposed rules in March 2022 and initiated a comment period. The final rules reflect a less stringent regime than initially proposed. The amendments call for (1) real-time disclosure of cybersecurity incidents on Form 8-K or Form 6-K, as applicable, and (2) annual disclosure of an issuer's cybersecurity risk assessment processes and the respective roles of its board of directors and management in overseeing and managing cybersecurity threats. There are no scaled disclosure accommodations for smaller reporting companies ("SRCs") or emerging growth companies, though smaller reporting companies will have additional time to comply with the new real-time disclosure requirements. The rules apply to both domestic operating companies and foreign private issuers ("FPIs").

Summary of the Amendments

Incident Reporting

Pursuant to new Item 1.05 of Form 8-K, an issuer will be required to disclose certain key details regarding material cybersecurity incidents within four business days of the issuer's determination that it has experienced a material cybersecurity incident. The item calls for disclosure regarding the timing of the incident as well as a description of its nature and scope and the material impact or reasonably likely material impact on the company. Information regarding whether the incident has been remediated or is being remediated or regarding whether data was stolen is not required under the final rules. Notably, if multiple incidents, when looked at in the aggregate, have a material impact or a reasonably likely material impact on the issuer, disclosure pursuant to Item 1.05 is triggered, even though each individual incident alone would not trigger disclosure. There are limited exceptions available enabling filers, in certain circumstances, to delay filing their Item 1.05 disclosure.

The amendments call for the issuer to make the materiality determination "without unreasonable delay" upon discovery, and utilizes the standard securities law definition of materiality (i.e., information is material if "there is a substantial likelihood that a reasonable shareholder would consider it important" in making an investment decision, or if it would have "significantly altered the 'total mix' of information made available."). The rules specify that issuers need not include "specific or technical information" regarding their cybersecurity systems or potential weaknesses. In addition, a failure to make timely Item 1.05 disclosure will not impact an issuer's Form S-3 eligibility. Lastly, Item 1.05 disclosure is eligible for the safe harbor from Section 10(b) and Rule 10(b)-5 liability offered by Rules 13a-11(c) and 15d-11(c) under the Securities Exchange Act of 1934, as amended.

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To the extent that certain information called for by Item 1.05 is not determinable or is unavailable at the time of filing, issuers will be required to file an amended Form 8-K. The amendment requirements do not obligate issuers to otherwise update their prior statements (unless so required by the securities laws generally).

For FPIs, cybersecurity incidents will be reported on Form 6-K.

Disclosure Regarding Risk Management, Strategy and Governance

Issuers will now be required to provide Form 10-K or Form 20-F, as applicable, disclosure regarding their cybersecurity risk management and strategy as well as regarding their cybersecurity governance. Under the new regime, issuers will need to provide the disclosure required by Item 106 of Regulation S-K, which includes: (1) a description of their board of director's role in the oversight of risk stemming from cybersecurity threats, including the role of any committees or sub-committees therein, and (2) a description of the management team's role and expertise in handling material cybersecurity risks.

Timing

The final rules are effective September 5, 2023. Issuers will be required to comply with the real-time disclosure requirements via Form 8-K or Form 6-K, as applicable, by December 18, 2023. SRCs can take advantage of a delayed compliance deadline of June 15, 2024 to comply with new Item 1.05 of Form 8-K. Issuers must include Item 106 disclosure in their annual reports for fiscal years ending on or after December 15, 2023.

Next Steps

Issuers should be preparing for the amendments' effectiveness now, including by:

- Educating the board of directors on the new rules;
- Reviewing boards' and management's cybersecurity oversight and expertise, and bolstering any gaps;
- Integrating cybersecurity into the company's compliance regime;
- Developing appropriate cybersecurity expertise at all levels;
- Building and reinforcing clearly defined escalation processes;
- Developing and updating incident response and notification guidelines, including identifying what "materiality" means for the issuer; and
- Consulting with experienced legal counsel throughout the process.

Are Crypto-Assets Securities: Courts See Two Sides of the Coin

Two recent decisions in the United States District Court for the Southern District of New York considered whether crypto-assets are securities, with Judge Analisa Torres and Judge Jed Rakoff coming down on different sides of the issue. Both decisions grappled with whether those assets were "investment contracts" and thus "securities" under the *SEC v. W.J. Howey Co*., 328 U.S. 293 (1946). In *Howey*, the Supreme Court held that an investment contract is a contract, transaction, or scheme whereby a person (1) invests his money (2) in a common enterprise[1] and (3) is led to expect profits solely from the efforts of the promoter or a third party." 328 U.S. at 298-99.

On July 13, 2023, Judge Torres issued a ruling on competing motions for summary judgment in *SEC v. Ripple Labs*, No. 20-cv-10832 (S.D.N.Y.), holding that certain sales of Ripple's XRP tokens (Ripple's native token) did not constitute the sale of securities due to the context of those sales. Judge Torres found that a crypto-asset "is not necessarily a security on its face" and each transaction must be separately analyzed and evaluated on the basis of the content of the instruments in question, the purposes intended to be served, and the factual setting as a whole to determine whether the sale constitutes a sale of securities. Judge Torres held that although sales of XRP to institutional investors would constitute sales of securities, sales of XRP to programmatic buyers (i.e., those who purchased XRP via a trading algorithm on digital asset exchanges through blind bid/ask transactions) would not.

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[1] The "common enterprise" prong can be demonstrated through a showing of "horizontal commonality," where the investors' assets are pooled and the fortunes of each investor are tied to the fortunes of other investors, as well as to the success of the overall enterprise. Revak v. SEC Realty Corp., 18 F.3d 81, 87 (2d Cir. 1994). While some courts allow the common enterprise prong to be satisfied through a showing of "strict vertical commonality," which requires that "the fortunes of investors be tied to the fortunes of the promoter," the Second Circuit has never adopted this test, id. at 88, and neither Judges Torres nor Rakoff applied strict vertical commonality in their decisions.

In considering the circumstances surrounding Ripple's programmatic sales, Judge Torres found that the purchasers—who did not know the identity of the token seller—could not have had a reasonable expectation of profits from Ripple's efforts and the transaction was therefore not an "investment contract" under the *Howey* test. Judge Torres distinguished these circumstances from those surrounding Ripple's sales to institutional buyers, finding that institutional buyers who purchased XRP pursuant to written contracts would have done so "with the expectation that they would derive profits from Ripple's efforts." Judge Torres also held that another category of transactions—Ripple's distribution of XRP tokens to its employees as compensation and to third parties to develop new applications for XRP and the XRP Ledger—did not constitute investment contracts. The Court noted that because the recipients of the tokens did not provide any "money or some tangible and definable consideration" in return, these distributions did not meet the first prong of the *Howey* test, which requires an "investment of money as part of the transaction or scheme." A copy of the *Ripple* decision can be found **here**.

On July 31, 2023, Judge Rakoff issued a ruling on a motion to dismiss in *SEC v. Terraform Labs*, No. 23-cv-01346 (S.D.N.Y.), in which he explicitly disagreed with Judge Torres' decision in *Ripple*, and held that the sale of Terraform coins to retail investors through secondary market transactions constituted an investment contract and therefore the sale of securities. Judge Rakoff "decline[d] to draw a distinction based on manner of sale" of the crypto-assets and stated that there was no distinction between the assets sold to secondary-market purchasers and those sold to institutional buyers. A copy of the *Terraform* decision can be found **here**.

Activism Update

Sternlicht v. Hernandez: Court of Chancery Affirms DE Courts Willingness to Enforce Advance Notice Bylaws Against Activist Investors

Summary: In **Sternlicht v. Hernandez, C. A. 2023-0477-PAF**, the Delaware Court of Chancery confirmed and clarified the high bar that plaintiffs must meet for courts to find a board of directors has a fiduciary duty to waive an advance notice bylaw.

Factual Background: The board of directors of Cano Health, Inc. ("Cano"), a publicly-traded healthcare company, began fracturing in late 2022, when, among other things, the Chairman and CEO allegedly told a potential acquirer that the company was not for sale despite the company being near insolvency, and allegedly engaged in other corporate improprieties, including obtaining loans from parties related to the company. The full board eventually became aware of such actions, and board tensions increased throughout early 2023. Six weeks after expiration of the deadline for board nominations to be timely submitted under Cano's bylaws, the board stripped the Chairman / CEO of his board Chair title (though he remained the CEO and a director), and three directors, who collectively held 35.7% of the voting power, resigned from the board in protest. Shortly thereafter, the three recently resigned directors sent a letter demanding that the board reopen the director nomination window on the grounds that radical changes at the company made it inequitable to enforce the nominations deadline. The board rejected the demand for waiver of the advance notice deadline and reduced the size of the board from nine to six directors. The plaintiffs then filed a complaint seeking to enjoin Cano from enforcing the director nomination deadline, so to accommodate their proposals for a new board slate.

Discussion: Dating back to at least 1991, when the Delaware Court of Chancery issued its Opinion in *Hubbard v. Hollywood Park Realty Enters., Inc.*, No. 11779, 1991 WL 3151 (Del. Ch. Jan. 14, 1991), DE courts have shown a willingness to evaluate the application of advanced notice bylaws through an equitable lens. Crediting the Delaware Supreme Court's 1971 holding in *Schnell v. Chris-Craft Indus., Inc*., 285 A.2d 437 (1971), which instructs, that companies cannot "militarize the corporate machinery," *inter alia*, the Court of Chancery held in *Hubbard* that a board should waive advance notice bylaw provisions when a "radical shift in position, or a material change in circumstances" occurs after the advance notice deadline. *Hubbard*, 1991 WL 3151, at *12. The *Hubbard* court explained that it would be inequitable to bar director nominations under an advance notice bylaw if the key facts upon which a stockholder would decide to nominate candidates or make proposals are "inherently unknowable until after the nomination deadline has expired[,]" and the board's actions cause this significant change in circumstances. *Id.* at *11-12.

In 2014, the Court of Chancery, citing *Hubbard*, set forth a three-part test for determining whether a court should enjoin an advance notice director nomination deadline: (1) Did the change happen subsequent to the advance notice deadline?; (2) Was the change "unanticipated" and "material"?; and (3) Was the shift caused by the board of directors? *See AB Value Partners, LP v. Kreisler Mfg. Corp.*, 2014 WL 7150465, No. 10434-VCP, at *5 (Del. Ch. Dec. 16, 2014). Based on this holding, the plaintiffs in *Sternlicht* argued that a "radical shift in position" constitutes a material change, and further asserted that the material standard governing proxy disclosures to shareholders—*i.e.*, an omission is "material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote[,]" *Rosenblatt v. Getty Oil Co.*, 493 A.2d 929, 944 (Del. 1985) (quoting *TSC Indus., Inc. v . Northway, Inc.*, 426 U.S. 438, 499 (1976))— should apply." *Sternlicht v. Hernandez*, No. 2023-0477-PAF, 2023 WL 3991642, at *17 (Del. Ch. June 14, 2023). The *Sternlicht* court decidedly rejected the plaintiffs' argument as "misguided," holding:

> To the extent Plaintiffs argue that they need only establish that there has been a post-deadline disclosure or discovery of an omission about the company or a nominee that would satisfy a preliminary injunction, they are mistaken. Neither *Hubbard* nor

> *AB Value* stands for that proposition. Rather, "the Court's focus is on the board and material actions taken by the board that *substantially alter the direction of the company*."

Id. (internal footnote omitted).

The Court of Chancery further explained in *Sternlicht* that in order to enjoin an advance notice deadline there must be "material actions taken by the board that "*substantially alter the direction of the company*" in a way that would radically change the company's "business policy and direction" (rather than a change merely being "material" in the traditional securities law sense of the word). *Id.* at *17, *18. Further, the *Sternlicht* court observed that because "Plaintiffs were a three-member minority of the board" who "never had a majority of the board in their camp who suddenly switched allegiances and radically changed the direction of the Company[,]" their actions could not constitute material actions taken by the board, warranting injunctive relief. *Id.* at *21.

Key Takeaways: The *Sternlicht* holding affirms an important defense for public companies against activist investors. It confirms that Delaware courts will continue to enforce advance notice provisions, which provide certainty around the director election process, and only grant injunctive relief reopening nomination windows where plaintiffs show that the board and material actions taken thereby substantially alter company direction. The *Sternlicht* holding also indicates that plaintiffs seeking to enjoin an advance director nomination deadline must meet a higher materiality standard than which governs proxy disclosures to shareholders, and actions taken by a minority of the board should not warrant waiver of advance notice provisions.

Other Regulatory Updates

2023 DGCL Amendments Now Effective

On August 1, 2023, the Delaware legislature's most recent amendments to the Delaware General Corporation Law became effective. The amendments include a number of changes designed to simplify pertinent matters for Delaware corporations, particularly those that are publicly traded or are seeking to go public in the future. Significant changes include: reducing the stockholder vote required by public company stockholders to approve an amendment to the certificate of incorporation to implement a reverse stock split or an increase or decrease to the number of authorized shares of a class of stock; enabling corporations to implement a forward stock split (and any necessary proportional increase in authorized stock incident thereto) without stockholder approval; and streamlining the process to ratify defective corporate acts For further information, please see our client alert **here**.

Nasdaq Rule Changes Related to Reverse Stock Splits

Nasdaq submitted a proposed rule change to the SEC regarding the timeframe and requirements for notification and disclosure related to reverse stock splits. Rather than following the "Substitution Listing Event" process, Nasdaq-listed companies seeking to implement a reverse stock split will be required to submit a Company Event Notification Form to Nasdaq by 12 pm ET five business days prior to the proposed market effective date, which should include a copy of the draft public disclosure regarding the reverse stock split as well as all information called for by the form. In addition, Nasdaq-listed companies would be required to provide Reg FD compliant notice (e.g., Form 8-K, press release) regarding a reverse stock split in advance of 12 pm ET two business days prior to the proposed market effective date and follow standard pre-release procedures with the MarketWatch Department. In addition, Nasdaq also adopted a rule change establishing a regulatory halt in pre-market trading for securities subject to a reverse stock split, to enable Nasdaq and other market participants sufficient time to correct any errors with the ordering / quotation of the security subject to the split.

Updated Form I-9 and E-Verification Allowed in Onboarding Process

There have been two important recent developments related to the Form I-9 used by employers for verifying the identity and employment authorization of individuals hired for employment in the United States. First, the U.S. Citizenship and Immigration Services has issued a new version of the Form I-9, which all employers must use starting November 1, 2023. Second, as of August 1, employers who participate in E-Verify and are in good standing may use an alternative document inspection procedure allowing them to perform document verification for the Form I-9 remotely instead of physically examining an employee's original identity and employment authorization documents in person.

DOJ and FTC Release New Draft Merger Guidelines

Summary: Last month, the FTC and DOJ jointly issued updated Merger Guidelines for public comment. Addressing both horizontal and vertical mergers, the draft guidelines would replace prior pronouncements of competition policy including the 2010 Horizontal Merger Guidelines and the 2020 Vertical Merger Guidelines. The new Merger Guidelines are the latest in a larger trend of expanded

and more aggressive antitrust enforcement by the agencies under the Biden administration. In light of this trend, merging parties are well-advised to plan for potential scrutiny and corresponding delay in deal documents, their clearance strategy, and potential litigation/settlement scenarios.

Notable Changes and Key Provisions: The new Merger Guidelines include tougher market concentration presumptions, meaning that the FTC and DOJ will assume anticompetitive effects are likely even where combined market shares are relatively modest. Resurrecting a theory of competitive harm seen in cases in the 1960s and 1970s, the new Merger Guidelines adopt the so-called "entrenchment theory" for conglomerate mergers, which applies to deals with no horizontal or vertical overlap, but where the transaction may "entrench or extend" a dominant position. According to the draft, a dominant position is where one of the merging firms possesses at least 30% market share in any market. The new Merger Guidelines also call for closer scrutiny of transactions that may cause potential harm to rivals or may eliminate potential competition. Serial acquisitions or "roll-ups" will be an area of focus. Impacts to labor and input markets will become a prominent theory of competitive harm. Please see our **client alert** for additional information.

Timing: While the draft guidelines are subject to a 60-day comment period and have not yet been formally adopted, they reflect theories the DOJ and FTC are already investigating in pending transactions and indicate intensifying scrutiny of deals in pursuit of the administration's broader enforcement mandate.

New Sustainability and Climate-related Disclosure Standards

Summary: On July 25, 2023, the International Organization of Securities Commissions ("IOSCO") officially endorsed the new International Financial Reporting Standards ("IFRS") sustainability and climate-related disclosure standards ("Standards"). The Standards were developed by the International Accounting Standards Board and the International Sustainability Standards Board and are comprised of the General Requirements for Disclosure of Sustainability-related Financial Information Standard and the Climate-related Disclosures Standard, each released in June 2023.

Overview: The Standards support the goal of consistent and comparable global sustainability and climate-related disclosures, and address monitoring, managing, identifying, as well as tracking the progress of sustainability-related and climate-related risks and opportunities. Notably, the Standards use a financial materiality standard—that is, disclosure is material if omitting, obscuring or misstating the disclosure could be reasonably expected to influence investor decisions—and not the stricter double materiality standard that has been proposed in other sustainability disclosure regimes. The Standards are structured to be used with any accounting principles, including U.S. Generally Accepted Accounting Principles ("GAAP"). Further, International Sustainability Standards Board attempted to accommodate the concern that companies may find compliance burdensome, by allowing companies to provide "reasonable and supportive information that is available to the entity at the reporting date without undue cost or effort."

Applicability and Timing: The Standards—which are voluntary—are to be applied for reporting periods beginning on or after January 1, 2024; however, jurisdictions may decide to make the Standards mandatory. Consistent with its endorsement, IOSCO is calling on its 130 member jurisdictions to incorporate the Standards into their existing regulations. The IOSCO's endorsement signals a continuing and growing consensus for a global disclosure framework for sustainability-related information. Adoption by participating regulators and markets of these standards will support access to consistent and comparable sustainability and climate-related information for investors in global capital markets.

Takeaway: Many jurisdictions, including the UK, Canada, Australia, China, and Japan, have signaled an intent to or have already begun taking steps to introduce the ISSB's Standards. To further support the implementation of the Standards, the IFRS Foundation also released an **overview** in July 2023 for its anticipated Adoption Guide. The overview notes forthcoming support and guidance relevant for both regulators and preparers (i.e., a four-fold strategy introducing proportionality and stability mechanisms, transitional relief for some disclosure requirements, establishing capacity building programs and technical support, and introducing scalability and the phasing-in of requirements). Despite a general reliance on GAAP standards, U.S.-based public companies should closely monitor global implementation of these Standards, as the Standards may apply to global subsidiaries and affiliates, JVs, portfolio companies, and investment targets subject to IFRS reporting and disclosure standards.

Litigation Corner

SCOTUS "Clarifies" the Undue Hardship Standard for Religious Accommodation Claims

Under Title VII of the Civil Rights Act of 1964, employers must reasonably accommodate an employee's sincerely held religious beliefs, practices, or observances in the workplace unless doing so would impose an "undue hardship on the conduct of the employer's business." Relying on *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), lower courts had interpreted the standard for assessing whether accommodating a religious employee's request is an undue hardship to be whether it would require an employer "to bear more than a de minimis cost."

On June 29, 2023, the U.S. Supreme Court issued a unanimous decision in *Groff v. DeJoy*, 600 U.S. __ (2023), "clarifying" the undue hardship standard in religious accommodation claims under Title VII, and in doing do, created a heightened standard for employers assessing religious accommodation requests. Under *Groff*, to show that granting a religious accommodation would create an undue hardship, "[a]n employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business."

Given the heighten standard, employers should immediately take steps to ensure compliance, including revisiting their policies and procedures for assessing religious accommodation requests, training employees involved with making religious accommodations decisions on the new standard, and modifying the content of their assessment of religious accommodation requests as appropriate to account for and document any substantial negative impact that granting the accommodation would have on the conduct of the employer's business.

Our full client alert can be found **here**.

SCOTUS Strikes Down Affirmative Action Programs in College Admissions

On June 29, 2023, the U.S. Supreme Court issued its much-anticipated decision in the consolidated cases of *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. __ (2023), and S*tudents for Fair Admissions, Inc. v. University of North Carolina*, 600 U.S. __ (2023), holding that both universities' admissions programs— which permitted the schools to consider a person's race when making admission decisions— violate the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. Because race-based action by government actors is "inherently suspect," and permitted only in extraordinary cases under the Equal Protection Clause, the Court applied "strict scrutiny" review (requiring any racial classification to "further compelling government interests," and to be "narrowly tailored" to achieve such interests), which the Court found the programs failed to satisfy.

The Supreme Court's decision does not directly apply to private employers, as the decision does not interpret Title VII, which governs the employment practices of private employers. It principally interprets the Equal Protection Clause of the Fourteenth Amendment, which directly applies only to public institutions such as UNC, and applies that reasoning to Title VI, which applies to entities that receive federal financial assistance such as Harvard.

The Supreme Court's decision does not legally require companies to make any changes to their existing DEI, EEO, or affirmative action policies and programs, assuming that such practices comply with existing law. Nonetheless, despite its limited immediate impact on the employment sector, the Supreme Court's decision may trigger review of employment affirmative action and diversity initiatives due to agency-driven action and legal challenges to employer programs. As a result, it is important that employers have affirmative action and diversity programs reviewed by counsel to ensure compliance with existing law and future developments.

Our full client alert can be found **here**.

SEC Rulemaking Tracker

Recently Adopted Rulemaking		
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	Final rule adopted May 2023, effective July 31, 2023 Compliance for corporate issuers who file on domestic forms beginning with the first filing that covers the first full fiscal quarter that begins on or after October 1, 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 recent 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		
Modernization of Beneficial Ownership Reporting	Significant amendments to modernize the filing deadlines for initial and amended beneficial ownership reports on Schedules 13D and 13G	Comment period reopened until June 27, 2023; final action pushed back until October 2023
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 until October 2023
SPACs	Comprehensive changes overhauling regulation of SPAC structure	Awaiting final action; pushed back until October 2023
Anticipated Rulemaking		
Corporate Board Diversity	Potential rulemaking requiring disclosure regarding diversity of board members and director nominees	Pushed back until April 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 until October 2023
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 until October 2023
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 until October 2023
Rule 144 Holding Period	Potential amendments to resale safe harbor for restricted / control securities	Pushed back until April 2024

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