Holland & Knight

美国霍兰德奈特律师事务所

www.hklaw.com

CHINA PRACTICE 期刊
NEWSLETTER

MAY - JUNE 2022

2022 年 5、6 月刊

Table of Contents

China Practice Newsletter

Holland & Knight is a U.S.-based global law firm committed to provide high-quality legal services to our clients. We provide legal assistance to Chinese investors and companies doing business or making investments in the United States and Latin America. We also advise and assist multinational corporations and financial institutions, trade associations, private investors and other clients in their China-related activities. With more than 1,600 professionals in 31 offices, our lawyers and professionals are experienced in all of the interdisciplinary areas necessary to guide clients through the opportunities and challenges that arise throughout the business or investment life cycles.

We assist Chinese clients and multinational clients in their China-related activities in areas such as international business, mergers and acquisitions, technology, oil and energy, healthcare, real estate, environmental law, private equity, venture capital, financial services, taxation, intellectual property, private wealth services, data privacy and cybersecurity, labor and employment, ESOPs, regulatory and government affairs, and dispute resolutions.

We invite you to read our China Practice Newsletter, in which our authors discuss pertinent Sino-American topics. We also welcome you to discuss your thoughts on this issue with our authors listed within the document.

霍兰德奈特律师事务所是一家位于美国的全球性法律事务所，我们致力于向客户提供高质量的法律服务。我们向在美国及拉丁美洲进行商业活动或投资的中国投资人及公司提供他们所需的各类法律协助。我们也向跨国公司、金融机构、贸易机构、投资人及其他客户提供他们于其与中国相关活动中所需的咨询和协助。我们在 31 个办公室的 1600 多名对各领域有经验的律师及专业人员能够协助客户处理他们在经营或投资过程中所遇到的各种机会及挑战。

我们向中国客户及从事与中国有关活动的跨国客户提供法律协助的领域包括国际商业、企业并购、科技法律、石油及能源、医疗法律、房地产、环保法律、私募基金、创投基金、金融法律服务、税务、知识产权、私人财富管理法律服务、信息隐私及网络安全、劳动及雇佣法律、员工持股计划、法令遵循及政府法规、及争议解决。

我们邀请您阅读刊载我们各作者就与中美有关的各议题所作论述的 China Practice 期刊。我们也欢迎您向本期刊的各作者提供您对各相关议题的看法。

SEC Releases Proposal to Enhance Disclosures for SPACs and De-SPAC Transactions

By Bradley D. Houser, Shane N. Segarra, Alexa Nicole Póo and Hayes Rule

The U.S. Securities and Exchange Commission (SEC) proposed new rules on March 30, 2022, that would require enhanced disclosures in initial public offerings (IPOs) by special purpose acquisition companies (SPACs) and in business combination transactions involving SPACs (de-SPAC transactions). The proposed new rules are anticipated to increase the costs and complexity for SPAC sponsors and management teams as well as target companies in complying with the additional disclosure requirements and increase litigation and enforcement activity against SPACs, de-SPAC companies and their directors and officers. At the same time, the rules would enhance the information that is available to investors and provide them with certain procedural protections in SPAC IPOs and de-SPAC transactions.

PROPOSED RULES

The proposed rules regarding SPAC disclosures would affect SPACs and de-SPAC transactions in several major respects. The rules would include, but are not limited to, the following noteworthy proposals, which are examined more closely on the following pages:

- enhanced disclosures regarding SPAC sponsors, conflicts of interests and dilution of shareholder interests
- additional disclosures on de-SPAC transactions, including with respect to the fairness of the transactions to the SPAC investors
- a requirement that the private target company in a de-SPAC transaction would be a co-registrant when a SPAC files a registration statement on Form S-4 or Form F-4, subjecting the signatories to potential liability under Section 11 of the Securities Act of 1933, as amended (Securities Act)
- a re-determination of smaller reporting company (SRC) status within four business days following the consummation of a de-SPAC transaction
- an amended definition of "blank check company" to make the liability safe harbor in the Private Securities Litigation Reform Act of 1995 (PSLRA) for forward-looking statements such as projections, unavailable in filings by SPACs and certain other blank check companies
- a rule that deems underwriters in a SPAC IPO to be underwriters in a subsequent de-SPAC transaction when certain conditions are met, subjecting underwriters to potential Section 11 liability
- a rule that a business combination transaction involving a reporting shell company and another entity that is not a shell company constitutes a sale of securities to the reporting shell company's shareholders for purposes of the Securities Act
- a new rule and amendments better aligning the required financial statements of private companies in transactions involving shell companies with those required in registration statements for traditional IPOs

- a proposal that a SPAC would not need to register as an investment company under the Investment Company Act of 1940 (1940 Act) if it meets certain conditions

The **full 372-page proposal**, as well as a **three-page summary**, are available on the SEC's website.

BACKGROUND ON SPACS

SPACs first emerged in the 1990s as an alternative to blank check companies that were regulated under Rule 419 of the Securities Act. SPACs gained immense popularity over the last two years as an alternative to a traditional IPO. SPACs raised more than $83 billion in 2020 and more than $160 billion in 2021 through IPOs. During those two years, more than half of all IPOs were conducted by SPACs.[1]

A SPAC is typically a shell company created for the purpose of acquiring a private company (the de-SPAC transaction) within a certain timeframe (typically 18-24 months). A SPAC is organized and managed by a sponsor investor and typically conducts a firm commitment underwritten IPO of redeemable shares and warrants. Following the IPO, the SPAC usually places most or all of the proceeds in a trust or escrow account to fund the de-SPAC transaction, and the SPAC's shares and warrants are registered and begin trading on a national securities exchange.

If a SPAC does not consummate a de-SPAC transaction within its listed timeframe, the sponsor may seek an extension or the SPAC may dissolve and liquidate proceeds from the trust or escrow account on a pro rata basis to the SPAC's public shareholders. If a SPAC proposes a de-SPAC transaction, SPAC shareholders may either 1) redeem their shares and receive a pro rata amount of the IPO proceeds or 2) remain a shareholder of the post-combination company. To offset redemptions, SPACs often conduct private investment in public equity (PIPE) transactions.

The SPAC has become a popular vehicle for issuers to access the capital markets because it allows a private company to become a publicly listed company while avoiding the enhanced disclosure requirements and potential liability in a typical IPO process. Additionally, a SPAC may offer greater pricing certainty in merger negotiations, a faster route to going public and more freedom in using projections.

In its proposal, the SEC mentioned several concerns about SPACs and de-SPAC transactions from commentators regarding transparency around conflicts of interests, compensation, dilution, shareholder rights and financial projections. The SEC said it believes "greater transparency and more robust investor protections could assist investors in evaluating and making investment, voting, and redemption decisions with respect to these transactions."

PROPOSED CHANGES

Proposed New Subpart 1600 of Regulation S-K

The proposal would create a new Subpart 1600 of Regulation S-K, which sets forth special disclosure requirements for SPAC IPOs and de-SPAC transactions. The new subpart would require:

- enhanced disclosures for SPAC IPOs and de-SPAC transactions about the SPAC sponsor and its affiliates. Among other things, the proposal would require disclosure around the SPAC sponsor's experience and involvement in the SPAC's activities and its compensation; interests in the SPAC of controlling persons; agreements among the SPAC, sponsor and unaffiliated holders regarding the redemption of outstanding securities; agreements among the SPAC sponsor or its affiliates and the SPAC's directors or officers

regarding determining whether to proceed with a de-SPAC transaction; and tabular disclosure of material lock-up agreements.

- additional disclosures for a de-SPAC transaction, including 1) whether the SPAC reasonably believes the de-SPAC transaction and any related financing transaction are fair or unfair to investors and 2) whether the SPAC has received any outside report, opinion or appraisal relating to the fairness of the transaction

- certain disclosures on the prospectus cover page for 1) SPAC IPOs regarding the timing of the SPAC transaction, redemptions, sponsor compensation, dilution (including tabular dilution disclosure) and material conflicts of interest and 2) de-SPAC transactions regarding material financing transactions, sponsor compensation, dilution and material conflicts of interest

- further disclosure in the prospectus summary for 1) SPAC IPOs regarding how a target company will be identified, any shareholder approval requirements, material financing transactions, and material conflicts of interest and material terms of the securities offered and 2) de-SPAC transactions regarding background and material terms of the transactions, redemption rights, material conflicts of interest, financing transactions and tabular disclosure of sponsor compensation and dilution

ALIGNING DE-SPAC TRANSACTIONS WITH TRADITIONAL IPOS

The proposal would seek to align de-SPAC transactions with typical IPOs by providing procedural protections for investors and aligning disclosures and the legal obligations of issuers to those typically found in an IPO. More specifically, the proposal would:

- amend the registration statement forms and schedules filed in de-SPAC transactions to require additional disclosures about the private target company

- require that disclosure documents in de-SPAC transactions be disseminated to investors 1) at least 20 days before a shareholder meeting or the earliest date of action by consent or 2) if the jurisdiction of incorporation or organization limits the period to less than 20 days, the maximum period for disseminating such disclosure documents permitted under the law

- deem a private target company in a de-SPAC transaction to be a co-registrant when a SPAC files a Form S-4 or Form F-4 for a de-SPAC transaction, causing the target company and its signing persons – including the principal executive officer, principal financial officer, controller/principal accounting officer and a majority of the board of directors or persons performing similar functions of the target company – to be subject to potential liability under Section 11 of the Securities Act

- amend the definition of SRC to require a re-determination of SRC status within four business days of the consummation of a de-SPAC transaction. This would generally require SPACs that initially qualified as SRCs to provide more comprehensive disclosures – such as three years of financial statements and quantitative and qualitative information about market risk – earlier following a de-SPAC transaction than under existing rules

- propose a definition for "blank check company" that would encompass SPACs and certain other blank check companies for purposes of the PSLRA. The safe harbor for forward-looking statements under the PSLRA would not be available to SPACs, including with respect to projections of target companies seeking to access the public markets through a de-SPAC transaction.

BUSINESS COMBINATIONS INVOLVING SHELL COMPANIES

To further emulate the typical IPO process, the SEC is proposing to add a new Rule 145a and new Article 15 of Regulation S-X and related amendments. Under Rule 145a, any business combination between a reporting shell company and another entity that is not a shell company will be deemed to involve a sale of securities to the reporting shell company's shareholders, which could give rise to greater liability under the federal securities laws for parties involved in the de-SPAC transaction. Under Article 15 and related amendments, financial statement reporting requirements in a business combination would more closely align with traditional IPOs.

The proposal would seek to amend relevant forms, schedules and rules to closely align the financial statement reporting requirements in de-SPAC transactions to those in traditional IPOs. One primary change broadens the circumstances in which the private target company may only report two years of financial statements relating to the SPAC's status as an emerging growth company (EGC) and the target company's qualification as an EGC and SRC.

ENHANCED PROJECTIONS DISCLOSURE

The SEC also seeks to enhance the reliability of projections disclosures in SEC filings and require additional disclosures when projections are disclosed in connection with de-SPAC transactions. The proposal would seek to amend Item 10(b) of Regulation S-K to address the broad concerns of projections generally.

- Any projected measures that are not based on historical financial results or operational history should be clearly distinguished from projected measures that are based on historical financial results or operational history.

- It generally would be misleading to present projections that are based on historical financial results or operational history without presenting such historical measure or operational history with equal or greater prominence.

- The presentation of projections that include a non-Generally Accepted Accounting Principles (GAAP) financial measure should include a clear definition or explanation of the measure, a description of the GAAP financial measure to which it is most closely related and an explanation why the non-GAAP financial measure was used instead of a GAAP measure.

Proposed Item 1609 of Regulation-S-K would address de-SPAC transaction concerns specifically. Item 1609 would require a registrant to provide the following disclosures in a de-SPAC transaction:

- with respect to any projections disclosed by the registrant, the purpose for which the projections were prepared and the party that prepared the projections

- all material bases of the disclosed projections, all material assumptions underlying the projections and any factors that may materially impact such assumptions, including a discussion of any factors that may cause

the assumptions to be no longer reasonable, the material growth rates or discount multiples used in preparing the projections and the reasons for selecting such growth rates or discount multiples

- whether the disclosed projections still reflect the views of the board or management of the SPAC or target company, as applicable, as of the date of the filing; if not, then discuss the purpose of disclosing the projections and the reasons for any continued reliance by the management or board on the projections

PROPOSED SAFE HARBOR UNDER THE 1940 ACT

The SEC stated in its proposed rules that it is concerned that SPACs may fail to recognize when their activities trigger the 1940 Act and the investor protections provided under the 1940 Act. To address this issue, the SEC proposed a new safe harbor under the 1940 Act that would change the definition of "investment company" for SPACs that satisfy certain conditions. To meet the conditions, a SPAC must, among other things:

- maintain assets comprising only cash items, government securities and certain money market funds

- seek to complete a de-SPAC transaction after which the surviving entity will be primarily engaged in the business of the target company

- enter into an agreement with a target company to complete a de-SPAC transaction within 18 months of its IPO and complete the de-SPAC transaction within 24 months of the IPO; any assets not used in the de-SPAC transaction must be distributed in cash to investors as soon as reasonably practicable

UNDERWRITERS' SECTION 11 LIABILITY

In recognizing underwriters' role as gatekeepers to the public markets, the SEC is proposing Securities Act Rule 140a, which would subject underwriters to potential Section 11 liability for certain activities related to a SPAC. Underwriters may be liable under Section 11 if they 1) act as an underwriter of a SPAC's securities and 2) take steps to facilitate a de-SPAC transaction or any related financing transaction or otherwise participate (directly or indirectly) in the de-SPAC transaction. As indicated in the proposed rules, acting as a financial advisor to the SPAC, assisting in identifying potential target companies, negotiating merger terms, finding and negotiating PIPE or other financing or receiving compensation in connection with a de-SPAC transaction, among other activities, could all constitute underwriter participation in the de-SPAC transaction and expose the underwriter to potential liability.

The SEC believes these rules will better motivate SPAC underwriters to exercise the proper care in ensuring the accuracy of these transactions' disclosures.

TAKEAWAYS

Although these proposed rules and amendments may change before being finalized, the proposed rules have put participants in SPAC transactions on notice that the SEC intends to aggressively regulate SPAC IPOs and de-SPAC transactions. In the short term, the market is expected to see increased de-SPAC activity to get ahead of the SEC's implementation of the final rules regulating SPACs. Some commentators to the proposed rules will likely urge the SEC to consider a transition period for the new rules, but what such a transition would look like, or whether one will be adopted, is unclear.

SPAC sponsors and the management teams of SPACs and companies considering merging with a SPAC should anticipate providing enhanced disclosures in their public filings, a longer timeline from start to finish for SPAC-related transactions (including greater reliance on legal and accounting advisors for planning, structuring and drafting the necessary documentation and preparing for a more complex comment and response process with the SEC), and potential increased risk of liability from private litigation and SEC enforcement. At the same time, the rules would enhance the information that is available to investors and better align the interests of SPAC sponsors, operators and investors.

COMMENT PERIOD

The public comment period will remain open for the longer of: 1) 30 days following publication of the proposal in the Federal Register or 2) May 31, 2022, which is 60 days following the proposal's publication date on the SEC's website.

Notes

[1] Proposed Rules, at page 8.

SEC 发布加强 SPAC 和 SPAC 并购交易披露的提案

原文作者：**Bradley D. Houser**、**Shane N. Segarra**、**Alexa Nicole Póo** 及 **Hayes Rule**

美国证券交易委员会（SEC）于 2022 年 3 月 30 日提出了新规则，要求特殊目的收购公司（SPAC）在首次公开发行（IPO）和涉及 SPAC 的企业并购交易（SPAC 并购交易）中加强披露。拟议的新规则预计将增加 SPAC 发起人和管理团队以及目标公司遵守额外披露要求的成本和复杂性，并增加针对 SPAC、SPAC 并购交易的公司及其董事和高管的诉讼和执法活动。与此同时，这些规则将增强投资人可获得的信息，并为他们在 SPAC 上市和 SPAC 并购交易中提供某些程序保护。

拟议规则

有关 SPAC 披露的拟议规则将在几个主要方面影响 SPAC 和 SPAC 并购交易。这些规则将包括但不限于以下值得注意的提议，而这些提议将在以下几页进行更仔细的检验：

- 加强对 SPAC 发起人、利益冲突和股东利益稀释的披露
- 对 SPAC 并购交易的额外披露，包括交易对 SPAC 投资人的公平性
- 当 SPAC 在 S-4 表格或 F-4 表格中提交注册声明时，要求 SPAC 并购交易中的私人目标公司为共同注册人，根据经修订的《1933 年证券法》（证券法）第 11 节，使签署人承担潜在责任
- 在 SPAC 并购交易完成后四个工作日内重新确定较小报告公司（SRC）的状态
- 修订了“空白支票公司”的定义，以使 1995 年《私人证券诉讼改革法案》（PSLRA）中的责任避风港适用于 SPAC 和某些其他空白支票公司提交的文件中无法提供的预测等前瞻性陈述
- 当满足某些条件时，将 SPAC IPO 中的承销商视为后续 SPAC 并购交易中的承销商的规则，使承销商承担潜在的第 11 节责任
- 规定涉及报告壳公司和非壳公司的另一实体的企业并购交易构成《证券法》下的向报告壳公司股东出售证券的交易
- 一项新规则和修正案更好地将涉及空壳公司的交易中私营公司所需的财务报表与传统 IPO 的注册报表中所需的财务报表保持一致
- 如果 SPAC 符合某些条件，则 SPAC 无需根据《1940 年投资公司法》（1940 年法案）注册为投资公司

完整的 372 页提案以及一份**三页的摘要**可在 SEC 网站上查阅。

SPAC 的背景

SPAC 最早出现于 1990 年代，是作为空白支票公司的替代品。空白支票公司受《证券法》第 419 条的监管。作为传统 IPO 的替代方案，SPAC 在过去两年中获得了巨大的人气。投资人通过 SPAC IPO 在 2020 筹集了超过 830 亿美元，而在 2021 通过 IPO 募集了超过 1600 亿美元。在这两年中，超过一半的 IPO 是由 SPAC 进行。[1]

SPAC 通常是为在特定时间段（通常为 18-24 个月）内收购私人公司（SPAC 并购交易）而创建的壳公司。SPAC 由发起人投资人组织和管理，通常进行可赎回股份和认股权证的确定承诺承销 IPO。IPO 后，SPAC 通常将大部分或全部收益存入信托或托管账户，为 SPAC 并购交易提供资金，SPAC 的股票和认股权证在全国的证券交易所注册并开始交易。

如果 SPAC 未在其列出的时间范围内完成 SPAC 并购交易，发起人可寻求延期，或者 SPAC 可解散并按比例向 SPAC 的公众股东清算信托或托管账户的收益。如果 SPAC 提出进行 SPAC 并购交易，SPAC 股东可以 1）赎回其股份并按比例获得 IPO 收益，或 2）继续作为合并后公司的股东。为了抵消赎回，SPAC 经常进行公共资本中的私人投资（PIPE）交易。

SPAC 已成为发行人进入资本市场的热门工具，因为它允许私人公司成为上市公司，同时避免了典型 IPO 过程中强化的披露要求和潜在责任。此外，SPAC 可以在合并的谈判中提供更大的定价确定性、更快的上市途径以及更大的使用预测的自由度。

SEC 在提案中提到了评论员对 SPAC 和 SPAC 并购交易的几点关于利益冲突、薪酬、稀释、股东权利和财务预测的透明度的担忧。SEC 表示，它认为“更高的透明度和更有力的投资人保护措施，可以帮助投资人评估和做出与这些交易有关的投资、投票和赎回决定。”

提议的修改

拟议的 S-K 法规第 1600 子部分

该提案将创建新的 S-K 条例第 1600 子部分，该子部分规定了 SPAC IPO 和 SPAC 并购交易的特殊披露要求。新的子部分将要求：

- 加强对 SPAC IPO 和 SPAC 并购交易的 SPAC 发起人及其附属公司的披露。除其他事项外，该提案将要求披露 SPAC 发起人的经验、参与 SPAC 活动的情况及其报酬；控股人在 SPAC 中的权益；SPAC、发起人和非关联持有人之间关于赎回已发行股票的协议；SPAC 发起人或其关联公司与 SPAC 董事或高管之间关于决定是否进行 SPAC 并购交易的协议；以及以表格形式披露重大锁定协议。

- SPAC 并购交易的额外披露，包括 1）SPAC 是否合理地认为 SPAC 并购交易和任何相关融资交易对投资人公平或不公平，以及 2）SPAC 是否收到与交易公平性有关的任何外部报告、意见或评估

- 招股说明书封面上关于 1）涉及 SPAC 交易的时间安排、赎回、发起人的补偿、稀释（包括表格稀释披露）和重大利益冲突的 SPAC IPO 的某些披露，以及 2）关于 重大融资交易、发起人补偿、稀释和重大利益冲突的 SPAC 并购交易的披露

- 在 1）SPAC IPO 的招股说明书摘要中进一步披露目标公司的发现方式、任何股东批准要求、重大融资交易、重大利益冲突和所发行证券的重大条款，以及 2）SPAC 并购交易的背景和重大交易条款、赎回权，重大利益冲突、融资交易以及发起人补偿和稀释的表格披露

使 SPAC 并购交易与传统 IPO 保持一致

该提案将通过为投资人提供程序性保护，并将发行人的披露和法律义务与 IPO 中通常发现的披露和法律义务保持一致，从而使 SPAC 并购交易与典型的 IPO 保持一致。更具体地说，该提案将：

- 修改 SPAC 并购交易中提交的注册声明表格和附表，以要求对私人目标公司进行额外披露

- 要求在 SPAC 并购交易中向投资人分发披露文件 1）至少在股东大会召开前 20 天或经同意采取行动的最早日期之前，或 2）如果公司或组织的司法管辖区将披露文件的期限限制在 20 天以内，则该期间为法律允许的分发披露文件的最长期限

- 当 SPAC 为 SPAC 并购交易提交 S-4 表格或 F-4 表格时，将 SPAC 并购交易中的私人目标公司视为共同注册人，使目标公司及其签字人（包括首席执行官、首席财务官、财务总管/首席会计官和大多数董事会成员或执行目标公司类似职能的人员）根据《证券法》第 11 条承担潜在责任

- 修改 SRC 的定义，要求在 SPAC 并购交易完成后的四个工作日内重新确定 SRC 状态。这通常要求最初具备 SRC 资格的 SPAC 在 SPAC 并购交易后比在现有规则下更早地提供更全面的披露，例如三年的财务报表以及有关市场风险的定量和定性信息。

- 提出“空白支票公司”的定义，为 PSLRA 的目的，该定义将涵盖 SPAC 和某些其他空白支票公司。PSLRA 下前瞻性声明的安全港将不适用于 SPAC，包括目标公司寻求通过 SPAC 并购交易进入公开市场的预测。

涉及壳公司的企业合并

为了进一步模仿典型的 IPO 流程，SEC 提议增加新的 145a 规则和新的 S-X 条例第 15 条以及相关修正案。根据 145a 规则，报告壳公司与非壳公司的另一实体之间的任何企业合并将被视为涉及向报告壳公司的股东出售证券，这可能会根据联邦证券法对参与 SPAC 并购交易的各方产生更大的责任。根据第 15 条及相关修正案，企业合并中的财务报表报告要求将与传统的 IPO 更加一致。

该提案将寻求修改相关表格、附表和规则，使 SPAC 并购交易中的财务报表报告要求与传统 IPO 中的财务报表报告要求紧密一致。一个主要变化扩大了私人目标公司只需提出与 SPAC 作为新兴增长型公司（EGC）的地位以及目标公司作为 EGC 和 SRC 的资格相关的两年财务报表的情形。

加强披露

SEC 还寻求提高 SEC 备案文件中预测披露的可靠性，并要求在披露与 SPAC 并购交易有关的预测时进行额外披露。该提案将寻求修订 S-K 条例第 10（b）项，以解决普遍存在的预测问题。

- 任何不基于历史财务结果或运营历史的预测措施应与基于历史财务结果或运营历史的预测措施明确区分。

- 如果根据历史财务业绩或运营历史进行预测，而不以同等或更突出的方式呈现此类历史指标或运营历史，通常会产生误导。

- 包括非公认会计原则财务指标的预测报告应包括对该指标的明确定义或解释，与之最密切相关的公认会计原则财务指标的描述，以及为什么使用非公认会计原则财务指标而不是使用公认会计原则指标的解释。

条例-S-K 的拟议第 1609 项将具体解决 SPAC 并购交易的顾虑。第 1609 项将要求注册人在 SPAC 并购交易中提供以下披露：

- 关于注册人披露的任何预测，预测的编制目的和编制预测的的人

- 披露预测的所有重要基础、预测的所有重要假设以及可能对这些假设产生重大影响的任何因素，包括可能导致假设不再合理的任何因素的讨论，编制预测时使用的实质增长率或折扣率，以及选择此类增长率或折扣率的原因

- 披露的预测是否仍然反映了 SPAC 或目标公司（如适用）董事会或管理层截至提交日期的观点；如果不是的话，则讨论披露预测的目的，以及管理层或董事会继续依赖预测的原因

根据 1940 年法案提议的安全港

SEC 在其提议的规则中表示，它担心 SPAC 可能无法识别其活动何时触发 1940 年法案以及 1940 年法案规定的投资人保护。为了解决这个问题，SEC 根据 1940 年法案提出了一个新的安全港，该法案将改变满足某些条件的 SPAC“投资公司”的定义。为了满足这些条件，SPAC 必须：

- 维护仅包含现金项目、政府证券和某些货币市场基金的资产

- 寻求完成 SPAC 并购交易，而之后存续实体将主要从事目标公司的业务

- 与目标公司签订协议，在 IPO 后 18 个月内完成 SPAC 并购交易，并在 IPO 后 24 个月内完成 SPAC 并购交易； SPAC 并购交易中未使用的任何资产必须在合理可行的情况下尽快以现金形式分配给投资人

承销商的第 11 节责任

在承认承销商作为公开市场看门人的角色时，SEC 提出了《证券法》第 140a 条规则，该规则将使承销商对与 SPAC 相关的某些活动承担潜在的第 11 条责任。如果承销商 1）担任 SPAC 证券的承销商，2）采取措施促进 SPAC 并购交易或任何相关融资交易，或以其他方式（直接或间接）参与 SPAC 并购交易，则承销商可能根据第 11 条承担责任。如拟议规则所述，担任 SPAC 的财务顾问，协助确定潜在目标公司，谈判合并条款，寻找和谈判管道或其他融资，或接受与 SPAC 并购交易有关的补偿，以及其他活动，都可能构成承销商参与 SPAC 并购交易，并使承销商承担潜在责任。

SEC 认为，这些规则将更好地激励 SPAC 承销商在确保这些交易披露的准确性方面采取适当的谨慎措施。

学习要点

尽管这些拟议的规则和修正案可能在最终确定之前发生变化，但拟议的规则已经让 SPAC 交易的参与人注意到，SEC 打算积极监管 SPAC IPO 和 SPAC 并购交易。在短期内，市场预计将看到 SPAC 并购交易活动增加，以赶在 SEC 实施监管 SPAC 的最终规则之前。对拟议规则的一些评论员可能会敦促 SEC 考虑新规则的过渡期，但这种转变看起来是什么样的，或者是否会被采纳，目前还不清楚。

SPAC 发起人、SPAC 的管理团队以及考虑与 SPAC 合并的公司应预期在其公开文件中提供强化披露，SPAC 相关交易从开始到结束的时间更长（包括更多地依赖法律和会计顾问来规划、组织和起草必要的文件，并准备与 SEC 进行更复杂的评论和回应流程），以及私人诉讼和 SEC 执法可能增加的责任风险。与此同时，这些规则将增强投资人可获得的信息，更好地协调 SPAC 发起人、运营商和投资人的利益。

评论期

公开评论期将为：1）提案在《联邦公报》上发表后 30 天，或 2）2022 年 5 月 31 日（即提案在 SEC 网站上发表后 60 天）两者中较长的时间。

附注

[1] 拟议规则，见第 8 页。

Intellectual Property Protection in the Metaverse

By Thomas W. Brooke and Rodrigo Javier Velasco

HIGHLIGHTS:

- The U.S. Trademark and Patent Office (USPTO) has experienced a significant rise in the number of trademark applications to protect goods and/or services in a virtual sphere, in what is now being referred to as "the metaverse."
- Protectable intellectual property assets in the metaverse vary from copyrighted content to all manner of trademarks, including logos, brands, slogans and trade dress in the form of packaging and design, and possibly even design patent protection for unique configurations.
- Companies should conduct a thorough analysis of the virtual landscape where they hope to market and promote goods and services in order to determine whether they even want to do business in the metaverse.

The U.S. Trademark and Patent Office (USPTO) has experienced a significant rise in the number of trademark applications to protect goods and/or services in a virtual sphere. These primarily include applications related to non-fungible tokens (NFTs) and in relation to virtual goods and services available in what is now being referred to as "the metaverse."

In the past two decades, the dramatic rise in e-commerce saw brand owners scrambling to protect their assets in cyberspace, beginning with domain names, and then social media handles. Now, with the growth of interconnectivity plus digital experience creating virtual reality and augmented reality, technology experts and marketers refer to these new spheres of human interaction as the metaverse. This new market offers – and will likely expand upon – new ways for various industries to increase scalability, including new business opportunities and new ways to promote products and services at an even faster pace.

Interoperability is an important feature of this latest development in the digital economy; consumers have the ability to move virtual items such as clothes or cars from one platform to another. In the real world, a consumer can buy a sports team jersey at the mall or online and then wear it to a sporting event, a restaurant or at home. In the virtual landscape, an outfit could be purchased and worn by an avatar in more than one platform. Purchases of virtual goods and services could be used in numerous virtual worlds.

In light of such new scenarios, brand owners must consider intellectual property (IP) strategies for leveraging business models and innovation. Protectable IP assets in the metaverse vary from copyrighted content to all manner of trademarks, including logos, brands, slogans and trade dress in the form of packaging and design, and possibly even design patent protection for unique configurations. Companies should conduct a thorough analysis of the virtual landscape where they hope to market and promote goods and services in order to determine whether they even want to do business in the metaverse.

A NEW FRONTIER?

Globalization and collateral global market developments in all spheres, such as the evolution of banking systems and payments, will continue to challenge well established legal precedents. Changes in intellectual

property law are inevitable due to the new virtual landscape. Many legal questions must be resolved. For instance:

- Could a trademark be deemed famous in the metaverse and not in the physical world?
- What will future trademark licensing deals look like in the metaverse?
- How will trademark franchising and other business collaboration models be implemented in the metaverse?
- What will be the approach for protection under trademark, patent and copyright law when virtual worlds are combined as holograms with real world visual appearances?

NEXT STEPS AND CONSIDERATIONS

Enterprises should consider protecting and registering their trademark in the field of interconnected virtual reality for the following legal and commercial reasons:

- **Brand Protection and Enforcement:** Depending on an entity's business model and future product/strategy, companies should consider a proactive approach and update their trademark protection and IP contingency prevention plan. As more businesses move to operate in the metaverse, brand monitoring expenditures for detecting invalid or fraudulent use of trademarks is likely to keep increasing. At this point, it is too early to determine how brand protection and enforcement will unfold in the metaverse. Inevitably, however, commerce in the metaverse/virtual world will involve the fraudulent use of trademarks by third parties in a confusingly similar or identical way. Companies already operating in the virtual world or planning to do so, should anticipate such potential risks by registering their trademarks for use in a virtual marketplace. Doing so will give companies a better and more efficient way to enforce trademark rights if the prospect of litigation arises.
- **A Holistic Approach to IP Rights:** Linked to brand enforcement, the onset of the metaverse underlines the importance of considering IP rights holistically. Business models and core products and services offered in the metaverse emphasize the interconnectivity of IP rights like never before. A virtual business may have – as a primary core asset – a virtual product design, aspects of which that may need protection as trade dress under trademark law, through a design patent and under copyright law. In order to obtain unquestionable ownership of such a virtual product, especially in a legal action, IP protection must be carefully considered and addressed in a more diligent manner.
- **Market Presence:** From a marketing side and sales strategy, once enterprises decide to operate in the metaverse and proceed to protect their assets in the virtual world they will have to come to grips with the fact that such marketing could reach new classes of worldwide consumers at an unprecedented pace. Because of these new platforms, enterprises will have a new instrument for their brand to become globally recognizable and potentially famous. Brand awareness tools that monitor and protect trademark rights worldwide will be essential.

For more information and additional IP guidance in the metaverse, contact the authors.

元宇宙中的知识产权保护

原文作者：Thomas W. Brooke 及 Rodrigo Javier Velasco

重点摘要

- 美国商标和专利局（USPTO）面临到为保护虚拟领域中（现在被称为“元宇宙”）的商品和/或服务而提出的商标申请数量大幅增加的情况。
- 元宇宙中可保护的知识产权资产从受版权保护的内容到各种形式的商标，包括包装和设计形式的徽标、品牌、标语和商业外观，甚至可能是独特形状的设计专利保护。
- 公司应该对他们希望营销和推广商品和服务的虚拟环境进行彻底分析，以确定他们是否还想在元宇宙做生意。

美国商标和专利局（USPTO）面临到为保护虚拟领域中的商品和/或服务而提出的商标申请数量大幅增加的情况。这些主要包括与不可替代代币（NFT）相关、以及与现在被称为“元宇宙”的虚拟商品和服务相关的申请。

在过去 20 年中，电子商务的急剧崛起让品牌所有者争相保护他们在网络空间的资产，从域名开始，然后是社交媒体。现在，随着互联性和数字体验的增长，创造了虚拟实境和增强实境，技术专家和营销人员将这些人类互动的新领域称为元宇宙。这一新市场为各个行业提供了——并且可能会进一步扩大——提高可扩展性的新方式，包括新的商业机会和以更快的速度推广产品和服务的新方式。

互联性是数字经济最新发展的一个重要特征；消费者可以将衣服或汽车等虚拟物品从一个平台移动到另一个平台。在现实世界中，消费者可以在商场或网上购买运动队球衣，然后穿着它参加体育赛事、餐馆或在家里。在虚拟环境中，一个化身可以在多个平台上购买和穿着一套服装。虚拟商品和服务的购买可以在许多虚拟世界中使用。

鉴于这种新的情况，品牌所有者必须考虑知识产权（IP）策略来利用商业模式和创新。元宇宙中可保护的知识产权资产从受版权保护的内容到各种形式的商标，包括包装和设计形式的徽标、品牌、标语和商业外观，甚至可能是独特形状的设计专利保护。公司应该对他们希望营销和推广商品和服务的虚拟环境进行彻底分析，以确定他们是否还想在元宇宙做生意。

新的疆域？

全球化和全球市场在各个领域的发展，如银行系统和支付的演变，将继续挑战已确立的法律先例。由于新的虚拟环境，知识产权法的变化是不可避免的。许多法律问题必须解决。例如：

- 一个商标是否可以被视为在元宇宙而非实体世界中著名？
- 在元宇宙中，未来的商标授权交易会是什么样子？
- 元宇宙将如何实施商标特许经营和其他商业合作模式？

- 当虚拟世界作为全息图与真实世界的视觉外观相结合时，商标法、专利法和版权法下的保护方法是什么？

下一步和考虑事项

企业应考虑以下法律和商业原因，在互联虚拟现实领域中保护和注册自己的商标：

- **品牌保护和实施：**根据实体的商业模式和未来的产品/策略，公司应考虑采取积极的方法，更新商标保护和知识产权损坏预防计划。随着越来越多的企业转向元宇宙，用于检测商标无效或欺诈性使用的品牌监控支出可能会不断增加。在这一点上，现在确定品牌保护和执行将如何在元宇宙中展开还为时过早。然而，元宇宙/虚拟世界中的商业不可避免地会涉及第三方以令人困惑的相似或相同方式欺诈使用商标。已经在虚拟世界中运营或计划在虚拟世界中运营的公司，应该通过在虚拟市场中注册其商标来预测此类潜在风险。如果可能发生诉讼，这样做将为公司提供更好、更有效的方式来执行商标权。

- **知识产权的整体方法：**与品牌执行相关，元宇宙的出现强调了全面考虑知识产权的重要性。元宇宙提供的商业模式、核心产品和服务前所未有地强调了知识产权的相互关联性。作为主要核心资产，虚拟企业可能拥有虚拟产品设计，其某些方面可能需要根据商标法、设计专利和版权法作为商业外观加以保护。为了获得这类虚拟产品毫无疑问的所有权，尤其是在法律诉讼中，必须仔细考虑并以更勤奋的方式解决知识产权保护问题。

- **市场存在：**从营销方面和销售策略来看，一旦企业决定在元宇宙中运营，并着手保护其在虚拟世界中的资产，他们将不得不面对这样一个事实，即这种营销可能以前所未有的速度惠及全球新的消费者阶层。由于这些新平台，企业将拥有一种新的工具，使其品牌成为全球知名度和潜在知名度。监测和保护全球商标权的品牌意识工具至关重要。

有关元宇宙中的更多信息和其他知识产权问题建议，请与作者联系。

Forced Arbitration of Sexual Assault and Sexual Harassment Act Signed into Law

By Elizabeth A. Schartz, Meghan McCaig and Phillip M. Schreiber

HIGHLIGHTS:

- Under the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, individuals bringing sexual assault and sexual harassment claims who entered into predispute arbitration agreements or predispute class- or collective-action waivers now have the option to reject those agreements and waivers and instead bring those claims in court or to bring such claims via a class or collective action.

- Parties can still enter into enforceable arbitration agreements or class- or collective-action waivers with respect to sexual harassment and sexual assault claims after such claims arise.

- Courts, not arbitrators, have the power to determine whether the Act applies and whether the agreement requiring arbitration of predispute sexual assault or sexual harassment claims is enforceable.

President Joe Biden signed into law the **Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021** (the Act) on March 3, 2022. The Act amends the Federal Arbitration Act and gives individuals asserting sexual assault or sexual harassment claims under federal, state or tribal law the option to bring those claims in court even if they had agreed to arbitrate such disputes before the claims arose. In addition, those individuals or a named representative bringing sexual assault or sexual harassment claims may choose to proceed via a class or collective action even if they had waived the right to proceed collectively before the claims arose. The Act is effective immediately and applies to arbitration and class- and collective-action waiver agreements entered into by employees before its effective date.

The Act specifies that the enforceability of predispute arbitration provisions and class- and collective-action waivers is "at the election of the person alleging conduct constituting a sexual harassment dispute or a sexual assault dispute, or the named representative of a class or in a collective action alleging such conduct ... ." In other words, such agreements are not *per se* invalid, but the party bringing sexual assault or sexual harassment claims can elect to avoid them. Arbitration agreements and class- and collective-action waivers are still enforceable if the parties enter into those agreements *after* a dispute arises (though it will be the unusual case in which a claimant will prefer to have the dispute arbitrated and not subject to class or collective proceedings).

The Act gives the court, not an arbitrator, the power to determine the validity and enforceability of an agreement requiring arbitration of sexual harassment and sexual assault claims and the power to determine whether the Act applies. Under the Act, the court has that power *even if* the agreement purports to give the power to determine enforceability to the arbitrator.

Often, complaints alleging sexual assault or sexual harassment also allege other claims. It remains to be determined whether the option to avoid predispute arbitration or class- or collective-action waivers applies only to sexual assault or sexual harassment claims (as some commentators have posited) or to all claims at issue in a case. The Act provides: "[N]o predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to *a case* which is filed under Federal, Tribal, or State law and relates to the

sexual assault dispute or the sexual harassment dispute." Parties bringing sexual harassment and sexual assault claims likely will argue that the statute's use of the word "case" renders the statute applicable to all claims in the case.

Employers are not required to amend or replace existing arbitration and class- or collective-action waiver agreements. Nor are employers required to remove sexual assault or sexual harassment claims from their arbitration and class- or collective-action waiver agreements going forward. As explained above, claimants still can elect to use the arbitration process they previously agreed to and abide by the class-action waiver voluntarily, and may wish to do so to preserve privacy or because of a belief that the claim will be resolved more expeditiously than in the courts.

For more information or to examine the impact that the Act may have on your business, contact the authors or another member of Holland & Knight **Labor, Employment and Benefits Group**.

终止性侵犯和性骚扰事件强制仲裁法案签署成为法律

原文作者： Elizabeth A. Schartz、Meghan McCaig 及 Phillip M. Schreiber

重点摘要

- 在 2021 年 终止性侵犯和性骚扰事件强制仲裁法案之下，提出性侵犯和性骚扰索赔的个人，如果在争议前签订了仲裁协议或集体或共同诉讼豁免书，现在可以选择拒绝这些协议和豁免书，而向法庭提出这些索赔，或通过集体或共同诉讼提出此类索赔。

- 在性骚扰和性侵犯索赔发生后，当事人仍可就此类索赔签订有执行效力的仲裁协议或集体或共同诉讼豁免书。

- 法院而非仲裁员有权决定本法案是否适用，以及要求对争议发生前的性侵犯或性骚扰索赔进行仲裁的协议是否可执行。

拜登总统于 2022 年 3 月 3 日签署了《**2021 年终止性侵犯和性骚扰事件强制仲裁法案**》。该法案修订了《联邦仲裁法》，并允许根据联邦、州或部落法律主张性侵犯或性骚扰索赔的个人选择将这些索赔向法院提出，即使他们在索赔发生之前已同意对此类争议进行仲裁。此外，提出性侵犯或性骚扰索赔的个人或指定代表可以选择通过集体或共同诉讼进行诉讼，即使他们在索赔发生之前放弃了一起进行诉讼的权利。该法案立即生效，适用于员工在生效日期前签订的仲裁和集体或共同诉讼豁免书。

该法案规定，争议前签订的仲裁条款和集体及共同诉讼豁免书的可执行性是由“在主张构成性骚扰纠纷或性攻击纠纷的行为的人，或指控该等行为的一个集体诉讼或共同诉讼中的指定代表……”来选择。换句话说，此类协议本身并非必然无效，但提出性侵犯或性骚扰指控的一方可以选择避免此类协议。如果双方在争议发生后签订了仲裁协议以及集体和共同诉讼豁免书，则这些协议仍然可以执行（尽管这是一种罕见的情况，在这种情况下，索赔人更愿意将争议进行仲裁，而不受集体或共同诉讼的约束）。

该法案赋予法院而非仲裁人决定要求对性骚扰和性侵犯索赔进行仲裁的协议的有效性和可执行性的权力，以及决定该法案是否适用的权力。根据该法案，即使协议旨在赋予仲裁人决定可执行性的权力，法院也拥有该权力。

通常，指控性侵犯或性骚扰的诉状也会提出其他索赔。选择避免适用争议发生前签订的仲裁协议或集体或共同诉讼豁免书是否仅适用于性侵犯或性骚扰索赔（如一些评论员所假定的），还是适用于案件中所有有争议的索赔仍有待确定。该法案规定：“对于根据联邦、部落或州法律提起的与性侵犯纠纷或性骚扰纠纷有关的案件，争议前仲裁协议或争议前共同诉讼弃权不应有效或可被执行。”提出性骚扰和性侵犯索赔的当事人可能会辩称，该法令使用“案件”一词使该法令适用于本案中的所有索赔。

雇主无需修改或替换现有的仲裁和集体或共同诉讼豁免协议。雇主也不需要将性侵犯或性骚扰索赔从其仲裁和集体或共同诉讼豁免协议中删除。如上所述，索赔人仍然可以选择使用他们之前同意的仲裁程序，自愿遵守集体诉讼豁免，并且可能希望这样做是为了保护隐私，或者是因为相信索赔将比在法庭上更快地得到解决。

欲了解更多信息或了解该法案可能对您的业务产生的影响，请联系作者或 Holland & Knight 劳工、就业和福利团队的其他成员。

Biden Administration Finalizes Important Changes to the Buy American Rule

By Andrew K. McAllister, Libby Bloxom, Mackenzie A. Zales and Sarah Hubner

HIGHLIGHTS:

- The latest revisions by the Biden Administration revamp the Buy American Act requirements by increasing domestic content requirements for federal procurements, effective Oct. 25, 2022.
- The slow rollout of the final rule and gradual increases in the domestic content threshold allow contractors time to prepare for the enforcement of stricter Buy American Act requirements.
- Ongoing strategic review of supply chain sourcing is critical to ensure compliance with increasing domestic content thresholds and future amendments to the Buy American Act.

The U.S. Department of Defense, General Services Administration and NASA, on March 7, 2022, **published a final rule** revising the Buy American Act (BAA) requirements applicable to federal procurements. The final rule is the latest action in a year's worth of efforts by the Biden Administration in its Build Back Better agenda to prioritize domestic sourcing in government procurements. Efforts that began with President Joe Biden's Jan. 25, 2021, Executive Order (**E.O. 14005**), "Ensuring the Future Is Made in All of America by All of America's Workers" (Made in America), were followed by the publication of a July 2021 **proposed rule** implementing Made in America. To help U.S. companies meet the demands of the new BAA rule, the White House is working to establish a new manufacturing office in the U.S. Small Business Administration's federal contracting division.

SUMMARY OF KEY CHANGES

The final rule implements three noteworthy changes to the BAA requirements:

Increased Domestic Content Threshold: Notably, the final rule will gradually raise the domestic content threshold from 55 percent to 75 percent for manufactured products purchased by the federal government. Effective Oct. 25, 2022, the final rule increases the domestic content threshold for non-iron and steel products from 55 percent to 60 percent. Note that "predominantly of iron and steel" products (i.e., products comprised of 50 percent or more iron and steel) are still subject to the more stringent rule requiring less than 5 percent foreign iron and steel. The final rule also does not affect the commercially available off-the-shelf (COTS) exception, which waives the domestic content threshold for COTS items and only requires such items be manufactured in the United States. (This exception is not available for products made "predominantly of steel and iron" – except for fasteners). Incremental increases in the threshold will culminate in January 2029, at which time federal agencies will be required to meet a 75 percent domestic content requirement. Generally, it will be mandated that contractors comply with the threshold in effect in the year of delivery, even if the contract

spans across different threshold years. However, the rule does permit agencies to allow contractors to apply the domestic content threshold in effect at the time the contract was awarded for the entire period of performance. This exception is subject to approval by the respective agency's "senior procurement executive" in consultation with the Office of Management and Budget's Made in America Office. The increases in the domestic content threshold requirement, by date, are provided below:

Date	Domestic Content Threshold
Now – Oct. 24, 2022	55 percent
Oct. 25, 2022 – Dec. 31, 2023	60 percent
Jan. 1, 2024 – Dec. 31, 2028	65 percent
Jan. 31, 2029 and after	75 percent

Exception for a Lower Domestic Content Threshold Due to Unavailability or Unreasonable Cost: The final rule also creates a "fallback threshold," which allows an agency to use the current 55 percent threshold for end products or construction materials when 1) no end products or construction materials are available that meet the new domestic content threshold or 2) such products or materials that comply with the new domestic content threshold are of an unreasonable cost. The fallback threshold enables companies to more easily manage potential unpredictability in their supply chains while still complying with the BAA requirements. It is important to note that the fallback threshold does not apply to items predominantly made of iron or steel or COTS items, as noted above. The fallback threshold is available only until calendar year 2030.

Increasing Price Preference for "Critical Items" and "Critical Components": Lastly, the final rule mandates the application of a higher price preference for critical items and components, in accordance with **E.O. 14017**, "America's Supply Chains." However, the rule does not include the entire framework for this preference system. A subsequent rulemaking will establish the list of critical components, along with the enhanced price evaluation preference to be applied to each critical component. The final rule is largely consistent with the proposed rule, but it does not institute a post-award reporting requirement for domestic content in critical end products.

OTHER UPCOMING AMENDMENTS

The final rule also precedes impending amendments to the BAA regulations stemming from **The Infrastructure Investments and Job Acts**, passed into law on Nov. 15, 2021 (the Infrastructure Act). The Infrastructure Act requires that, by Nov. 15, 2022, regulations be implemented that amend the definitions of "domestic end product" and "domestic construction material" to ensure that iron and steel products are – to the greatest extent possible – made with domestic components and provide a definition for "end product manufactured in the United States." This indicates the "predominantly of iron and steel" domestic content threshold and analysis may be increased or altered.

CONCLUSION

Moving forward, companies will want to continually review their supply chains to ensure compliance with the changing BAA requirements – particularly given the incremental domestic content threshold increases as a result of the final rule and the upcoming amended regulations dictated by the Infrastructure Act.

If you have any questions about how these updates may affect your business or seek assistance navigating compliance with the enhanced BAA requirements, reach out to the authors or another member of Holland & Knight's **International Trade Group**.

Holland & Knight
美国霍兰德奈特律师事务所

拜登政府最终确定了购买美国货规则的重要变化

原文作者：Andrew K. McAllister、 Libby Bloxom、Mackenzie A. Zales 及 Sarah Hubner

重点摘要

- 拜登政府的最新修订修改了《购买美国货法案》的要求，增加了联邦采购的国内含量要求，于 2022 年 10 月 25 日生效。
- 最终规则的缓慢推出和国内含量门槛的逐步提高，让承包商有时间为执行更严格的《购买美国货法案》的要求做好准备。
- 对供应链采购战略持续的检验对于确保遵守不断提高的国内含量门槛和《购买美国货法案》的未来修订至关重要。

美国国防部、总务管理局和国家航空和航天局于 2022 年 3 月 7 日发布了一项最终规则，修订了适用于联邦采购的《购买美国货法案》（购买美国货法案）要求。这最终规则是拜登政府在其“重建更好未来的计划”（Build Back Better agenda）中一年努力的最新行动，即在政府采购中优先考虑国内采购。该等努力从拜登总统 2021 年 1 月 25 日的行政命令（**E.O 14005**）“确保未来是由全美国工人在全美国制造”（美国制造）开始，随后发表了为执行美国制造的 2021 年 7 月的拟议规则。为了帮助美国公司满足购买美国货法案新规定的要求，白宫正在美国小企业管理局的联邦合同部门设立一个新的制造办公室。

主要变化摘要

最终规则对购买美国货法案的要求进行了三项值得注意的更改：

提高国内含量门槛：值得注意的是，最终规则将逐步将联邦政府购买的制成品的国内含量门槛从 55%提高到 75%。自 2022 年 10 月 25 日起生效，最终规定将非钢铁产品的国内含量门槛从 55%提高到 60%。请注意，“以钢铁为主”的产品（即含 50%或以上钢铁的产品）仍需遵守更严格的规定，要求不超过 5%的外国钢铁。最终规则也不影响商用现货（COTS）例外情况，该例外情况免除了商用现货项目的国内含量门槛，只要求此类项目在美国制造。（这一例外不适用于“主要由钢铁制成”的产品——紧固件除外）。门槛的逐步提高将在 2029 年 1 月达到顶峰，届时联邦机构将被要求满足 75%的国内含量要求。一般来说，将强制要求承包商遵守交付年份生效的门槛，即使合同跨越不同的门槛年。然而，该规则确实允许各机构允许承包商在整个履约期间适用合同授予时生效的国内含量门槛。该例外情况须经相关机构的“高级采购主管”与管理和预算办公室美国制造办公室协商批准。截止日期，国内含量门槛要求的增加如下所示：

日期	国内含量门槛
现在至 2022 年 10 月 24 日	百分之 55
2022 年 10 月 25 日至 2023 年 12 月 31 日	百分之 60
2024 年 1 月 1 日至 2028 年 12 月 31 日	百分之 65
2029 年 1 月 31 日及之后	百分之 75

由于没可用或成本不合理而降低国内含量门槛的例外情况：最终规则还设定了一个“应变门槛”，当 1）没有满足新的国内含量门槛的最终产品或制造材料可用，或 2）此类产品或材料遵守新的国内内容门槛的成本不合理。退让门槛使公司能够更容易地管理其供应链中的潜在不可预测性，同时仍符合购买美国货法案 的要求。重要的是要注意，如上所述，应变门槛不适用于主要由钢铁或胶辊制成的物品。应变门槛仅在 2030 日历年之前可用。

增加“关键项目”和“关键组件”的价格优惠：最后，根据 **E.O.14017**《美国供应链》，最终规则要求对关键项目和组件应用更高的价格优惠。然而，该规则并不包括这一优惠制度的整个框架。随后的规则制定将建立关键部件清单，以及适用于每个关键部件的强化价格评估优先权。最终规则基本上与提议的规则一致，但它没有对关键终端产品的国内含量提出授标后报告要求。

其他即将进行的修订

最后一条规则也先于出自 2021 年 11 月 15 日通过的《**基础设施投资和就业法案**》《基础设施法》的购买美国货法案的法规的修订。《基础设施法》要求，到 2022 年 11 月 15 日，实施修订“国内最终产品”和“国内建筑材料”定义的法规，以确保钢铁产品尽可能由国内组件制造，并为“在美国制造的最终产品”提供定义。这表明“主要是钢铁”的国内含量门槛和分析可能会被增加或改变。

结论

展望未来，企业将希望不断审查其供应链，以确保符合不断变化的购买美国货法案的要求——特别是考虑到最终规则和即将修订的《基础设施法》规定的法规导致国内含量门槛不断增加。

如果您对这些更新可能对您的业务造成的影响有任何疑问，或在遵守增强的购买美国货法案的要求方面寻求帮助，请联系作者或 Holland & Knight 的 **International Trade Group** 的其他成员。

SEC Proposes Sweeping Climate-Related Disclosure Rules

By John D. Martini, Lara M. Rios, Robin Feiner, Scott Mascianica, Beth A. Viola, Kerry L. Halpern, Shawn M. Turner, Ira N. Rosner, Nicole F. Martini, Javan Porter and Brandon Len King

The U.S. Securities and Exchange Commission (SEC) on March 21, 2022, proposed rules that would require registrants to disclose information regarding climate-related risks in certain periodic reports and registration statements. Totaling 510 pages, the proposed rules are the culmination of an intense focus by the SEC on climate-related issues since President Joe Biden took office. The proposed rules are far-reaching, highly specific and will require significant compliance efforts from each public company.

SUMMARY OF REQUIRED DISCLOSURES

Under the SEC's proposed rules, registrants will be required to include climate-related risk disclosures in its annual reports and registration statements, including the following key provisions:

- **Climate-Related Financial Metrics in Note to Audited Financials.** Under Proposed Rule 14-02 to Regulation S-X, registrants will be required to disclose the financial impact of "severe weather events and other natural conditions" and "transition activities" on a line item in its consolidated financial statements. Similarly, registrants will be required to disclose the aggregate amount of expenditures or capitalized costs associated with expenditures to mitigate the risks of "severe weather events and other natural conditions" and "transition activities."

- **Greenhouse Gas (GHG) Emissions.** The proposed rules would also require registrants to disclose their GHG emissions for their most recently completed fiscal year. The SEC based the proposed GHG emissions disclosure rules on the concept of scopes, which are themselves based on the concepts of direct and indirect emissions, developed by the GHG Protocol. This would include a requirement for registrants to disclose Scope 1 emissions (emissions from operations owned or controlled by registrants) and Scope 2 emissions (indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat or cooling) separately after calculating them from all sources that are included in the registrant's organizational and operational boundaries. This, in turn, would require a registrant to set their organizational boundaries – operations owned or controlled by a registrant – to be included in the calculation of its GHG emissions.

  As detailed further below, some registrants will need to disclose Scope 3 emissions, defined as all indirect GHG emissions not otherwise included which occur in the upstream and downstream activities of a registrant's "value chain." Such disclosure will necessitate companies to consider activities "by a party other than the registrant" that relate to the production, sourcing, finishing and delivering a product. Scope 3 disclosure is only contemplated when such emissions are material or the registrant has set targets or goals for its Scope 3 emissions.

- **Targets and Goals**. The proposed regulations do not require registrants to set goals. If, however, registrants have set climate-related targets or goals, they must disclose them. The disclosure would have to include timelines for meeting each target, the registrant's plan for meeting its goals, data indicating progress made toward achieving the goals and information about carbon offsets or renewable energy certificates to the extent that the registrant uses them to meet its goals.

- **Governance.** Similar to the SEC's existing rules under Regulation S-K – and **mirroring** the SEC's recent proposed rules around cybersecurity governance for public companies – the proposed rules would require disclosure regarding each registrant's climate-related risk governance. This would include disclosure of:

- any board members or board committees responsible for the oversight of climate-related risks
- whether any member of a registrant's board of directors has expertise in climate-related risks
- a description of the processes and frequency by which the board or board committee discusses climate-related risks
- how the board is informed about climate-related risks, and how frequently the board considers such risk
- whether and how the board or board committee considers climate-related risks as part of its business strategy, risk management and financial oversight
- whether and how the board sets climate-related targets or goals and how it oversees progress against those targets or goals, including the establishment of any interim targets or goals, and
- management's role in assessing and managing climate-related risks, including (as applicable) whether certain portions of management are responsible for assessing and managing climate-related risks, the processes by which such parties are informed about climate-related risks, and whether and how frequently such parties report to the board on climate-related risks

- **Strategy, Business Model and Outlook.** Proposed Item 1502(b) of Regulation S-K would require disclosure of forward-looking information about a company's assessment of the materiality of climate-related risks over the short, medium and long term. This proposed item includes disclosure of physical risk, flood risk, water-stress risk and transition risk, and how it has considered the identified impacts as part of its business strategy, financial planning and capital allocation.

- **Risk Management.** Each registrant would be required to describe its processes for identifying and managing climate-related risks and opportunities, and how those processes fit into the registrant's greater risk management system. This section would also have to include a description of the registrant's transition plan (to lower carbon operations) to the extent the registrant has adopted one.\

ATTESTATION

To the extent that the registrant is required to provide Scope 1 and Scope 2 emissions disclosures and qualifies as an accelerated filer or a large accelerated filer, the registrant must include an attestation report covering the disclosure. The report must be prepared by an independent attestation provider with expertise in GHG emissions. Notably, as SEC Commissioners Allison Herren Lee and Caroline Crenshaw highlighted in their statements in support of the rule, this requirement would not be subject to a company's internal control over financial reporting obligations. Cf. Sarbanes-Oxley §404(b).

PHASE-IN

Assuming that the proposed rules are adopted and go into effect in 2022, registrants would be required to comply with the new disclosure rules in accordance with the following schedule:

Filer Type	Disclosure	Reporting Year
Large Accelerated Filer	All proposed disclosures, excluding Scope 3 emissions	FY 2023 (filed in 2024)
	Scope 3 emissions	FY 2024 (filed in 2025)
Accelerated Filers and Non-Accelerated Filers	All proposed disclosures, excluding Scope 3 emissions	FY 2024 (filed in 2025)
	Scope 3 emissions	FY 2025 (filed in 2026)
Smaller Reporting Company	All proposed disclosures, excluding Scope 3 emissions	FY 2025 (filed in 2026)
	Scope 3 emissions	Exempt

TAKEAWAYS

Holland & Knight's **Environmental, Social and Governance (ESG) Practice** will provide a more detailed analysis of the proposed rules in the coming days and can assist clients in preparing and submitting comments to the SEC. From a cursory analysis of the proposed rules it is clear that, if approved, these rules will result in a seismic shift for public-reporting companies. As the SEC acknowledged, many issuers already report aspects of their climate- and environmental-related risks and impacts. And, much like the SEC's implementation of other significant legislation (such as Sarbanes-Oxley and Dodd-Frank), the SEC has proposed a phase-in period for the rules and certain safe harbors. However, by mandating specific reporting around climate-related governance, requiring issuers to account for climate-related risks in their "value chain," and necessitating third-party attestation reports for certain registrants, the added compliance burden to reporting companies will be significant.

Parties may submit comments to the SEC until the later of 1) the 30th day after the proposal is published in the *Federal Register* and 2) May 20, 2022. If you would like assistance in submitting comments in response to the proposed regulations or evaluating how these changes will affect your business, reach out to the authors or the Holland & Knight attorney with whom you usually work.

ABOUT HOLLAND & KNIGHT'S ESG PRACTICE

Holland & Knight helps clients develop, organize and execute ESG strategies that increase ESG scores, protect directors, satisfy activist and institutional shareholders, mitigate regulatory compliance risk, increase market capitalization, and answer the ever-increasing demands for clients to respond to calls for environmental and social change. Our approach to ESG is comprehensive, practical, manageable and affordable. We use a disclosure-based solution designed to drive efficiency and provide results immediately without requiring significant operational changes. Our team brings to the table highly experienced and knowledgeable professionals in the key areas of climate and sustainability, diversity, equity and inclusion (DEI), corporate governance, financing, financial regulations, securities, executive compensation, data privacy and security, and litigation.

SEC 提出全面的气候相关信息披露规则

原文作者：John D. Martini、Lara M. Rios、Robin Feiner、Scott Mascianica、Beth A. Viola、 Kerry L. Halpern、Shawn M. Turner、Ira N. Rosner、Nicole F. Martini、 Javan Porter 及 Brandon Len King

美国证券交易委员会（SEC）于 2022 年 3 月 21 日提出要求注册人在某些定期报告和注册声明中披露与气候相关的风险信息的规则。这些拟议规则共 510 页，是自拜登总统上任以来，SEC 对气候相关问题高度关注的结果。拟议的规则影响深远、非常具体、并将要求每个上市公司做出重大的合规努力。

要求披露的摘要

根据 SEC 的拟议规则，注册人将被要求在其年度报告和注册声明中包括气候相关风险的披露，包括披露以下关键条款：

- 经审计的财务报表附注中需含与气候相关的财务指标。根据 S-X 条例的拟议规则第 14-02 条，注册人将被要求在其合并财务报表的一行项目中披露“恶劣天气事件和其他自然状况”以及“变化的活动”的财务影响。同样地，注册人将被要求披露与为减轻“恶劣天气事件和其他自然状况”以及“变化的活动”的风险的支出相关的支出或资本成本总额，。

- 温室气体（GHG）排放。拟议规则还将要求登记人披露其最近结束的财政年度的温室气体排放量。SEC 将拟议的温室气体排放披露规则建立在范围概念的基础上，而范围本身是基于温室气体议定书制定的直接和间接排放概念。这将包括要求注册人在从注册人组织和运营范围中包含的所有来源计算后，分别披露范围 1 排放（注册人拥有或控制的运营产生的排放）和范围 2 排放（购买或获得的电力、蒸汽、热量或冷却产生的间接 GHG 排放）。这将要求注册人设定其组织范围，即在计算其温室气体排放量时，将由注册人拥有或控制的运营包含在内。

  如下文所述，一些注册人需要披露范围 3 排放，而其被定义为注册人“价值链”上游和下游活动中未包括的所有间接 GHG 排放。这样的披露将使公司不得不考虑与“生产商、采购、整理和交付产品”有关的“注册人之外的一方”的活动。仅当此类排放物为重大排放物或注册人为其范围 3 排放物设定了目标或目标时，才考虑到范围 3 的披露。

- **目标和目的。**拟议的规则不要求注册人设定目标。然而，如果注册人设定了与气候相关的目标，他们必须予以披露。披露内容必须包括实现每个目标的时间表、注册人实现其目标的计划、表明在实现目标方面取得进展的数据，以及注册人使用碳抵消或可再生能源证书来实现其目标的信息。

- **治理。**与美国证券交易委员会 S-K 条例下的现有规则类似——并与美国证券交易委员会最近针对上市公司网络安全治理的拟议规则相对应——拟议规则将要求披露每个注册人与气候相关的风险治理。这将包括披露：

  - 负责监督气候相关风险的任何董事会成员或董事会委员会
  - 注册人董事会成员是否具有气候相关风险方面的专业知识

- 董事会或董事会委员会讨论气候相关风险的过程和频率说明
- 董事会如何了解气候相关风险，以及董事会考虑此类风险的频率
- 董事会或董事会委员会是否以及如何将气候相关风险视为其业务战略、风险管理和财务监督的一部分
- 董事会是否以及如何设定与气候相关的目标或目的，以及如何监督这些目标或目 的的进展，包括制定任何暂时目标或目的，以及
- 管理层在评估和管理气候相关风险方面的作用，包括（如适用时）管理层的某些部分成员是否负责评估和管理气候相关风险，该等各方了解气候相关风险的流程，以及该等各方是否和如何频繁地向董事会报告气候相关风险

- **战略、商业模式和前景。**条例 S-K 的拟议第 1502（b）项将要求披露有关公司对短期、中期和长期气候相关风险重要性评估的前瞻性信息。该拟议项目包括身体风险、洪水风险、水压力风险和过渡风险的披露，以及作为其业务战略、财务规划和资本配置的一部分，其如何考虑已确定的影响。

- **风险管理。**每个注册人都需要描述其识别和管理气候相关风险和机遇的流程，以及这些流程如何适应注册人更大的风险管理系统。本节还必须说明注册人的过渡计划（到低碳运营），只要注册人已经采纳了该计划。

证明

如果注册人需要提供范围 1 和范围 2 排放披露并具备加速申报人或大型加速申报人的资格，注册人必须包括一份涵盖披露的证明报告。报告必须由具有温室气体排放专业知识的独立认证机构编制。值得注意的是，正如 SEC 委员 Allison Herren Lee 和 Caroline Crenshaw 在支持该规则的声明中强调的那样，该要求不受公司财务报告义务内部控制的约束。参见 Sarbanes-Oxley 法案第 404（b）条。

逐步符合

如果拟议规则被采纳并于 2022 年生效，注册人将被要求按照以下时间表遵守新的披露规则：

申报人类型	披露	报告年度
大型加速申报人	所有拟议披露，但不包括范围 3 排放	2023 财年 (2024 年申)
	范围 3 排放	2024 财年 (2025 年申报)
加速申报人和非加速申报人	所有拟议披露，但不包括范围 3 排放	2024 财年 (2025 年申报)
	范围3排放	2025财年（2026年申报）
小型报告公司	所有拟议披露，但不包括范围 3 排放	2025 财年 (2026 年申报)
	范围 3 排放	豁免

要点

Holland & Knight 的环境、社会和治理（ESG）执业团队将在未来的日子中对拟议规则进行更详细的分析，并可帮助客户准备并向 SEC 提交意见。从对拟议规则的概略分析可以清楚地看出，如果这些规则获得批准，将导致上市报告公司发生重大转变。SEC 承认，许多发行人已经报告了与气候和环境相关的风险和影响。而且，就像 SEC 实施其他重要立法（如 Sarbanes-Oxley 法案和 Dodd-Frank 法案）一样，SEC 也提出了规则和某些安全港的逐步实施期。然而，通过强制要求围绕气候相关治理进行具体报告，要求发行人在其“价值链”中考虑气候相关风险，并要求为某些注册人提供第三方认证报告，报告公司增加的合规负担将是巨大的。

各方可在 1）提案在《联邦公报》上公布后的第 30 天和 2）2022 年 5 月 20 日两个日期的较晚之日之前向 SEC 提交意见。如果您希望在提交对拟议法规的回应意见或评估这些变化将如何影响您的业务方面获得帮助，请联系作者或您通常与之合作的 Holland & Knight 律师。

关于 HOLLAND & KNIGHT 的 ESG 业务

Holland & Knight 帮助客户制定、组织和执行 ESG 战略，以提高 ESG 分数、保护董事、满足维权人士和机构股东的要求、降低监管合规风险、增加市值，并满足客户对环境和社会变革不断增加的要求。我们的 ESG 方法全面、实用、可管理且价格合理。我们使用基于披露的解决方案，旨在提高效率并立即提供结果，而无需进行重大运营变更。我们的团队在气候与可持续性、多样性、公平与包容（DEI）、公司治理、融资、金融监管、证券、高管薪酬、数据隐私与安全以及诉讼等关键领域提供了丰富 经验和知识的专业人士。

About This Newsletter
有关本期刊

Information contained in this newsletter is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel. Holland & Knight lawyers are available to make presentations on a wide variety of China-related issues.

本期刊所刊载的信息仅供我们的读者为一般教育及学习目的使用。本期刊并不是为作为解决某一法律问题的唯一信息来源的目的所设计，也不应被如此使用。此外，每一法律管辖区域的法律各有不同且随时在改变。如您有关于某一特别事实情况的具体法律问题，我们建议您向合适的律师咨询。美国霍兰德奈特律师事务所的律师能够对许多与中国相关的问题提出他们的看法及建议。

About the Authors
关于本期作者

Libby Bloxom focuses her practice on a broad range of international trade regulatory and transactional matters, including foreign direct investment, industrial security, export control, sanctions and customs matters. Her practice also involves assisting clients in corporate jet transactions and structuring of corporate aircraft operations to comply with Federal Aviation Administration (FAA) regulations.

Thomas W. Brooke handles matters ranging from serving as litigation counsel in major intellectual property disputes across the globe, to initial counseling and trademark selection, copyright and trademark registration around the world, licensing and technology transfers. Related matters include drafting and interpreting agreements regarding ownership and use of names, images, photographs, software, trade secrets, music and other intellectual property. His clients are located all over the world and range from large and small businesses, associations and trade groups to entrepreneurial individuals.

Robin Feiner concentrates her practice in securities and capital markets. She has distinctive insights and perspectives given her extensive experience as legal counsel and investment banker. She represents companies, investment banks and private equity sponsors on equity transactions, particularly initial public offerings (IPOs), follow-ons and block trades. During her more than 20-year career, she has advised on more than 100 IPOs across a broad range of sectors, including industrials, consumer and retail, financial services, energy and power, real estate, technology and healthcare.

Kerry L. Halpern represents public and private clients in a large number of industries, including financial services, life sciences, consumer products and technology, throughout the United States, Canada, United Kingdom, Sweden and many other countries. She regularly advises compensation committees, executive management, and individual executives in connection with a large assortment of compensation and benefits issues.

Bradley D. Houser is co-chair of the South Florida Corporate, M&A and Securities Practice Group. He has nearly 30 years of experience handling capital markets, corporate and banking transactional matters. He focuses his practice on a wide range of securities matters, as well as mergers and acquisitions. He has extensive experience with real estate investment trusts (REITs), special purpose acquisition companies (SPACs) and banking transactions. He also advises boards of directors and senior management teams of public and private companies regarding corporate governance and control issues.

Brandon Len King focuses his practice on government investigations and enforcement actions, white collar defense, internal investigations and appellate law. In addition, he has significant experience with complex commercial litigation matters, municipal law, administrative law and business disputes.

John D. Martini is co-practice group leader of the Tax, Executive Compensation and Benefits Practice. He focuses his practice on executive compensation, corporate governance and employee benefits. He frequently represents public companies, private equity firms and management teams in connection with all phases of the employment relationship. He assists employers and executives in assessing the market value and market terms of management compensation arrangements, while ensuring that those arrangements are delivered under a beneficial tax structure.

Nicole F. Martini focuses her practice on employee benefits and executive compensation matters. She represents clients in a wide range of employee benefits matters, including design, drafting, operation, compliance, government filings, communications and administration of tax-qualified benefit plans, nonqualified deferred compensation plans, executive and equity compensation arrangements, and welfare benefit plans.

Scott Mascianica has more than 15 years of experience in the government and private sectors, and focuses his national practice on conducting internal investigations for public company issuers and other financial institutions, representing individuals and entities in investigations by the U.S. Securities and Exchange Commission (SEC) and U.S. Department of Justice (DOJ), as well as advising issuers, financial services firms and regulated entities on regulatory and compliance matters.

Andrew K. McAllister focuses on export controls, sanctions, customs, antidumping (AD) and countervailing duties (CVD), anti-corruption and industrial security. He advises clients on U.S. export controls laws, such as the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). He has extensive experience with U.S. trade embargoes and economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the U.S. Department of State.

Meghan McCaig represents clients in all types of high-stakes business litigation matters, including complex commercial, employment, tax, First Amendment, and oil and gas disputes. She has represented clients in matters in Texas, Oklahoma, New York, Pennsylvania, California, Illinois, New Jersey and Mississippi. She practices before federal and state trial and appellate courts and before arbitration panels, and has significant experience defending clients against class and collective action claims.

Alexa Nicole Póo is a corporate attorney who focuses her practice representing public and private companies on mergers and acquisitions (M&A), venture capital and general corporate matters.

Javan Porter focuses his practice on a variety of litigation and dispute resolution matters. This includes white collar criminal defense, product liability, class actions and securities law. His practice also includes guiding companies and individuals through internal and government investigations.

Lara M. Rios has extensive experience representing financial institutions, corporate borrowers, private equity sponsors and project developers in connection with structuring complex finance and capital markets transactions, both domestic and cross border, with a particular focus on the energy/infrastructure industry and Latin America.

Ira N. Rosner has more than three decades of experience helping entrepreneurs and corporate management teams create, fund, manage, grow and capitalize on their businesses. He has worked with a wide variety of companies, ranging from startup ventures to Fortune 100 enterprises, in a wide array of industries, including construction, healthcare, real estate, pharmaceuticals, aerospace and aviation, agriculture, energy, manufacturing, high tech, life sciences, retail, business outsourcing, telecommunications and insurance.

Shane Segarra focuses his practice on corporate law, including capital markets and securities matters, mergers and acquisitions (M&A), and corporate governance. He counsels clients regarding public and private securities transactions and other public and private corporate transactions. He has experience representing real estate investment trusts (REITs) and special purpose acquisition companies (SPACs), as well as companies in the financial, technology, real estate, banking, aerospace, engineering, media and beverage industries. He also advises the boards of directors and senior management teams of public and private companies regarding corporate governance and general corporate matters.

Elizabeth A. Schartz focuses her practice on representing management in client counseling and litigation of employment and labor law matters. Her experience includes litigating discrimination, wage-and-hour, employee benefit, Fair Labor Standards Act (FLSA) and state-law contract and tort claims; counseling employers on sensitive personnel and complex employment law matters; executive compensation, change-in-control and separation issues; social media and data privacy and security issues; employee classification issues; reductions in force, including Worker Adjustment and Retraining Notification (WARN) Act compliance; conducting workplace investigations; and drafting and litigating non-competition and related covenants.

Phillip M. Schreiber practices in the area of labor and employment. His practice is divided between counseling employers on a wide variety of labor and employment matters, litigating labor and employment disputes, performing labor and employment due diligence in connection with business acquisitions and sales, and drafting executive employment agreements, handbooks and employment policies. He has extensive substantive experience in the areas of wage payment, overtime pay and minimum wage laws, the Family and Medical Leave Act (FMLA), biometric information protection, employment discrimination and harassment, disability accommodation, retaliation and retaliatory discharge, union-management relations, covenants not to compete, trade secret protection, reductions in force, paid sick leave laws and prevailing wage laws.

Shawn M. Turner has a particular emphasis on mergers and acquisitions, corporate finance and general business transactions. He primarily represents public and private companies in corporate and securities matters, bank regulatory issues and corporate governance matters. Additionally, he provides clients with general counseling as well as advising on acquisition and investment strategies, anti-takeover defenses, executive compensation and corporate governance, and U.S. Securities and Exchange Commission (SEC) compliance matters.

Beth A. Viola has decades of experience in climate change and energy policy, and advises a range of corporate clients, coalitions and industry associations on public policy issues related to greenhouse gas (GHG) emissions reductions, renewable energy, environment, tax, trade, appropriations and public relations. She has deep and longstanding connections with the environmental community and an impressive track record in building, managing and successfully advocating on behalf of coalitions essential to shaping legislation and regulation.

Mackenzie A. Zales focuses her practice on international regulatory and compliance matters as well as civil actions in the U.S. Court of International Trade (CIT). She handles a broad range of corporate issues, including foreign direct investment, industrial security, export control, sanctions and customs matters.

Sarah Hubner is a paralegal for the firm's Corporate – Trade Regulation practice, working out of the Washington, D.C., office.

Hayes Rule is a law clerk for the firm's Corporate – South Florida practice, working out of the Miami office.

Rodrigo Javier Velasco is an international law clerk in the firm's Corporate – Trade Regulation practice, working out of the Washington, D.C., office.

Holland & Knight
美国霍兰德奈特律师事务所

Contact Our China Practice Attorneys | 与我们的 China Practice 律师联系

Primary Contacts 主要联系人：

Hongjun Zhang, Ph.D. 张红军博士
Washington, D.C.
+1.202.457.5906
hongjun.zhang@hklaw.com

Mike Chiang 蒋尚仁律师
New York | +1.212.513.3415
San Francisco | +1.415.743.6968
mike.chiang@hklaw.com

Juan M. Alcala | Austin
+1.512.954.6515
juan.alcala@hklaw.com

Leonard A. Bernstein | Philadelphia
+1.215.252.9521
leonard.bernstein@hklaw.com

Christopher W. Boyett | Miami
+1.305.789.7790
christopher.boyett.@hklaw.com

Vito A. Costanzo | Los Angeles
+1.213.896.2409
vito.costanzo@hklaw.com

Josias N. Dewey | Miami
+1.305.789.7746
joe.dewey@hklaw.com

R. David Donoghue | Chicago
+1.312.578.6553
david.donoghue@hklaw.com

Jonathan M. Epstein | Washington, D.C.
+1.202.828.1870
jonathan.epstein@hklaw.com

Leonard H. Gilbert | Tampa
+1.813.227.6481
leonard.gilbert@hklaw.com

Enrique Gomez-Pinzon | Bogotá
+57.601.745.5800
enrique.gomezpinzon@hklaw.com

Paul J. Jaskot | Philadelphia
+1.215.252.9539
paul.jaskot@hklaw.com

Adolfo Jimenez | Miami
+1.305.789.7720
adolfo.jimenez@hklaw.com

Roth Kehoe | Atlanta
+1.404.817.8519
roth.kehoe@hklaw.com

Robert J. Labate | San Francisco
+1.415.743.6991
robert.labate@hklaw.com

Alejandro Landa Thierry | Mexico City
+52.55.3602.8002
alejandro.landa@hklaw.com

Jeffrey W. Mittleman | Boston
+1.617.854.1411
jeffrey.mittleman@hklaw.com

Anita M. Mosner | Washington, D.C.
+1.202.419.2604
anita.mosner@hklaw.com

Ronald A. Oleynik | Washington, D.C.
+1.202.457.7183
ron.oleynik@hklaw.com

Douglas A. Praw | Los Angeles
+1.213.896.2588
doug.praw@hklaw.com

John F. Pritchard | New York
+1.212.513.3233
john.pritchard@hklaw.com

Robert Ricketts | London
+44.20.7071.9910
robert.ricketts@hklaw.com

Luis Rubio Barnetche | Mexico City
+52.55.3602.8006
luis.rubio@hklaw.com

Francisco J. Sanchez | Tampa
+1.813.227.6559
francisco.sanchez@hklaw.com

Evan S. Seideman | Stamford
+1.203.905.4518
evan.seideman@hklaw.com

Jeffrey R. Seul | Boston
+1.617.305.2121
jeff.seul@hklaw.com

Vivian Thoreen | Los Angeles
+1.213.896.2482
vivian.thoreen@hklaw.com

Shawn M. Turner | Denver
+1.303.974.6645
shawn.turner@hklaw.com

Matthew P. Vafidis | San Francisco
+1.415.743.6950
matthew.vafidis@hklaw.com

Stacey H. Wang | Los Angeles
+1.213.896.2480
stacey.wang@hklaw.com

Charles A. Weiss | New York
+1.212.513.3551
charles.weiss@hklaw.com

Jose V. Zapata | Bogotá
+57.601.745.5940
jose.zapata@hklaw.com

Office Locations 办公室地点

Algiers | Atlanta | Austin | Bogotá | Boston | Charlotte | Chicago | Dallas | Denver | Fort Lauderdale | Fort Worth | Houston
Jacksonville | London | Los Angeles | Mexico City | Miami | Monterrey | New York | Orange County | Orlando | Philadelphia
Portland | Richmond | San Francisco | Stamford | Tallahassee | Tampa | Tysons | Washington, D.C. | West Palm Beach