PAUL HASTINGS

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Public Company Watch

Key Issues Impacting Public Companies

SEC Spotlight

SEC Staff Issues New C&DIs related to Insider Trading Rules

On August 25, 2023, the SEC Staff issued five new C&DIs related to the new insider trading rules / Rule 10b5-1. Generally, the C&DIs:

- clarify that a plan that terminates by its terms without any action by the individual does not need to be disclosed pursuant to Item 408(a)(1) of Regulation S-K (i.e., in the issuer's Form 10-Q / Form 10-K for the quarter during which the plan was terminated);
- specify that Item 408 disclosure covers the adoption or termination of all Rule 10b5-1 trading arrangements and non-Rule 10b5-1 trading arrangements covering securities in which a director or officer has a direct or indirect pecuniary interest that is reportable under Section 16;
- indicate that for purposes of calculating the second-prong of the cooling-off period for directors and officers, the business date following the filing date of the issuer's Form 10-K / 10-Q should be considered "day one" of the "two business days" required (rather than the filing date being day one);
- clarify that open-market transactions by a 401(k) plan administrator, made at the direction of the issuer, to match a contribution by a plan participant does not count as an overlapping plan that would disqualify the plan participant from relying on Rule 10b5-1 for a concurrent open market trading plan; and
- state that the Rule 10b5-1(c) check box on Form 4 need not be checked for transactions in securities made pursuant to a Rule 10b5-1 trading plan that was adopted prior to the effective date of the amendments to Rule 10b5-1 (i.e., February 27, 2023).

Division of Corporation Finance Posts Sample Comment Letter Regarding XBRL Disclosures

On September 7, 2023, the SEC's Division of Corporation Finance issued a **sample comment letter** regarding issuers' XBRL disclosures, which includes comments focused on Item 405 of Regulation S-T, the cover page, pay v. performance disclosure and financial statements. The comment letter is not a complete list of the XBRL-related comments an issuer might anticipate, but highlights the importance of compliance with the technical aspects of the SEC rules. Many recent final rules—like the insider trading amendments, the share repurchase rules and the cybersecurity rules to name a few—include XBRL components so issuers should be building a buffer into their filing calendars to allow for ample time to tag their disclosures. A summary of the sample comments and relevant takeaways is set forth below.

In This Edition

- **Cover Page:** If an issuer does not consistently present the number of shares of common stock outstanding between its cover page and its balance sheet (i.e., presenting a whole amount in one place and the same amount in thousands in the second), the issuer could receive a comment asking for the information to be presented consistently in future filings.
- **Pay v. Performance:** Issuers should ensure that their new Item 402(v) of Regulation S-K disclosures are properly tagged utilizing Inline XBRL tagging. In addition, issuers must be sure to separately tag the disclosures responsive to each of Items 402(v)(5)(i)-(iv), even if the disclosures are combined into one graph or table in order to avoid drawing a comment.
- **Financial Statements:** To the extent that an issuer changes the XBRL element used to tag a particular line item from period to period, the issuer could receive a comment from the SEC Staff asking for the analysis behind why the change in element was appropriate and asking for period to period consistency going forward. In addition, if an issuer utilizes a custom tag rather than an XBRL element consistent with US GAAP, the issuer can expect the SEC Staff to ask for justification as to why the US GAAP tag is not applicable or to switch to the applicable US GAAP tag starting with the next filing.
- **Inline XBRL Tagging:** To the extent that a filer does not properly utilize Inline XBRL tagging for all required disclosures in a filing, the issuer could trigger a comment from the SEC Staff asking for it to file an amendment to the filing to include the applicable Inline XBRL presentation.

Takeaway: The SEC is laser focused on ensuring that issuers are (1) tagging all disclosures required to be tagged in the applicable XBRL or Inline XBRL format and (2) consistently tagging items quarter-over-quarter and throughout a particular filing. To the extent that an issuer does not properly tag its disclosures, it can expect to draw an SEC comment.

Form 10-Q Prep

The end of calendar year-end companies' third-quarter is just around the corner. As issuers start their Form 10-Q preparations, they should keep in mind the below considerations.

Applicable Deadlines

First things first, the below deadlines are applicable to Form 10-Q filings for the quarter ending September 30, 2023:

Filer Type	Deadline
Large Accelerated Filer	Thursday, November 9, 2023
Accelerated Filer	Thursday, November 9, 2023
Non-Accelerated Filer	Tuesday, November 14, 2023

Insider Trading Disclosures

This is the second quarter that new Item 408(a) of Regulation S-K disclosure regarding insider trading plans is required for issuers (other than SRCs). However, SRC's delayed compliance is rapidly coming to a close, and such filers will need to include Item 408(a) quarterly disclosures in their applicable filing for the quarter ending December 31, 2023 (i.e., Form 10-K for calendar year-end companies and Form 10-Q for other companies).

As a threshold matter, issuers need to determine whether any of their officers or directors have adopted, terminated or modified any trading arrangements intending to qualify for the affirmative defense conditions of Rule 10b5-1(c) (i.e., Rule 10b5-1 plans) or "non-Rule 10b5-1 trading arrangements" (as defined by new Item 408(c)) of Regulation S-K between July 1st and September 30th. As a reminder, modified plans are treated as the termination of the existing plan and adoption of a new plan. If any officers or directors adopted, terminated or modified any such trading arrangements, then the issuer's Form 10-Q must include disclosure (other than pricing information) regarding the material terms of the trading arrangement. Even if there were no trading arrangements triggering Form 10-Q disclosure obligations during the quarter, we recommend issuers include language indicating as such in their Form 10-Q filings as a best practice.

The parallel disclosure for issuers required by Item 408(d) of Regulation S-K regarding issuers' adoption, termination or modification of Rule 10b5-1 trading plans will not be required in this quarter's filing, but will need to be included in the issuer's applicable filing for next quarter (i.e., Form 10-K for calendar year-end companies or Form 10-Q for other companies).

For additional information regarding the insider trading rules, please see our **client alert**.

XBRL Disclosures

Per the SEC's signaling in its sample comment letter regarding issuers' XBRL disclosures, the SEC will be reviewing filings for compliance with XBRL tagging requirements. Issuers should set aside time to review their filings for compliance, including to ensure that any custom tags are justifiable and reviewing for internal and quarterly consistency. In addition, disclosure responsive to Item 408(a) of Regulation S-K should be tagged utilizing Inline XBRL.

China-Specific Disclosures

Issuers should keep in mind the SEC's **sample comment letter** to companies regarding China-specific disclosures. In particular, to the extent that an issuer has operations, or works with third-parties who have operations, in the Xinjiang Uyghur Autonomous Region, the issuer should consider whether the Uyghur Forced Labor Prevention Act and its restriction on the importation of goods from the Xinjiang Uyghur Autonomous Region, has had a material impact on its operations, business segments, products or lines of services. If so, the material impacts should be described in the issuer's MD&A. Also, companies based in China or that have a majority of their operations in China should consider whether any risk factor disclosure may be appropriate regarding any material impacts that "intervention" or "control by" the People's Republic of China might have on the company or its securities.

Other Updates

As part of their quarterly process, issuers should be considering whether any updates to their risk factor disclosure, forward-looking statement disclaimer or other forward-looking disclosure or MD&A are needed. As a reminder, Form 10-Q risk factor disclosure is limited to material changes from the risk factor disclosure included in the issuer' Form 10-K, and the SEC discourages issuers from reiterating their Form 10-K risk factors in response to Form 10-Q's Part II Item 1A disclosure, although issuers that frequently conduct offerings of their equity securities may find it preferable to repeat their updated risk factors in their Form 10-Q.

For the quarter ending September 30, 2023, issuers should keep in mind the following pertinent matters:

- Effects of sustained high interest rates and inflation on the financial and capital markets and related implications on the issuer's ability to borrow funds or refinance existing indebtedness;
- Choppiness in the capital markets and potential impacts on the issuer's ability to raise funds in the public or private markets;
- Downgrading of the United States' credit rating, and the issuer's preparedness to manage the related political risk;
- Lingering impacts of the turmoil in the banking and financial services sector;
- Continued evolution and use of machine learning and generative AI, including risks arising from insufficient human oversight of AI or a lack of controls and procedures monitoring the use of AI in day-to-day operations as well as from potential future competitive disadvantages related to a lack of investment in AI tools;
- Effects stemming from long-term reliance on hybrid work arrangements, including impacts on productivity and profitability, as well as on operating expenses and overhead costs and / or risks related to return to office programs, including their impact on workforce retention and issues stemming from non-compliance;
- Climate-related or natural disaster-related events like the wild-fires in Maui or increases in the cost of insurance coverage for entities with operations in high fire, hurricane or flood risk areas;
- Current geopolitical conditions, including the ongoing Russia-Ukraine War and conflict between China and Taiwan;
- ESG-related matters, including the pending SEC rules on climate-related disclosures and the new International Financial Reporting Standards sustainability and climate-related disclosure standards; and
- Impacts on the issuer's supply or distribution chains related to the above factors or otherwise.

Issuers should also consider industry-specific and geography-specific developments, for example:

- Issuers in the entertainment and media space should consider the ongoing WGA and SAG-AFTRA strike;
- Issuers in the residential real estate space should consider the impacts of the challenging housing market;

- Issuers that do business in California should consider the potential effects of proposed Senate Bill 253, the Climate Corporate Data Accountability Act and Senate Bill 261, Greenhouse Gases: Climate-Related Financial Risk and the issuer's ability to prepare the required disclosures; and
- Issuers in the banking industry should review their liquidity disclosures in their MD&A and their interest rate risk and sensitivity disclosures in their Quantitative and Qualitative Disclosures About Market Risk in light of the Division of Corporation Finance's focus on these disclosures coming out of the bank failures earlier this year.

SEC Staff Issues New C&DIs Related to Share Repurchase Rules

On August 30, 2023, the SEC Staff issued three CD&Is related to new Form F-SR, which was introduced with the final share repurchase rules. Generally, foreign private issuers (FPIs) will be required to file Form F-SR within 45 days after the end of the FPI's fiscal quarter, and it will contain disclosure regarding daily quantitative repurchase data throughout the quarter. However, Form F-SR need not be filed until the first full fiscal quarter that begins on or after April 1, 2024.

The C&DIs provide that:

- Form F-SR need not be filed with respect to a quarter in which neither the FPI nor an affiliated purchaser repurchased any of the issuer's equity securities, even if directors or senior management engaged in purchases or sales during the quarter (which would trigger the checkbox requirement on the cover of the form).
- Form F-SR should be filed for the fourth quarter of a fiscal year (in addition to all other quarters in which repurchases occurred).

SEC Brings and Settles Its First Non-Fungible Token Enforcement Action

Summary: On August 28, 2023, the SEC settled charges against Los Angeles-based media company Impact Theory LLC ("Impact Theory"), for offering and selling unregistered securities, in this case non-fungible tokens ("NFTs"), in violation of Sections 5(a) and 5(c) of the Securities Act. In the Matter of Impact Theory, LLC, Release No. 11226 (Aug. 28, 2023) (the "Order"). This is the SEC's first NTF enforcement action.

Facts: Specifically, the SEC alleged that from October 13, 2021 to December 6, 2021, Impact Theory offered and sold NFTs that Impact Theory referred to as "Founder's Keys," raising approximately $29.9 million worth of ether from at least hundreds of investors. In advance of the offering, Impact Theory publicly stated that it would deliver "tremendous value" to KeyNFT purchasers. Impact Theory also stated that it would use the offering proceeds for "development," "bringing on more team," and "creating more projects." Impact Theory invited potential investors to view the purchase of a KeyNFT as an investment into the business, stating that investors would profit from their purchases if Impact Theory was successful in its efforts. The SEC alleged that these NFTs were investment contracts, and therefore securities, pursuant to the test laid out in SEC v. W.J. Howey Co., 328 U.S. 293 (1946). The U.S. Supreme Court's "Howey test" and subsequent case law have found that an "investment contract" exists when there is the investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others.

Settlement: Impact Theory neither admitted nor denied the SEC's findings but agreed to pay (1) disgorgement of $5,120,718.27, (2) prejudgment interest of $483,195.90, and (3) a civil money penalty of $500,000. Impact Theory also repurchased approximately $7.7 million of KeyNFTs from investors as part of remedial efforts prior to the settlement, and agreed to destroy all KeyNFTs in its possession or control within 10 days of the date of the Order.

Dissent: Notably, on the same day, Commissioners Hester M. Peirce and Mark Uyeda publicly issued a dissent, stating that (1) they disagreed with the application of the Howey analysis and (2) the matter raises larger questions with which the SEC should grapple before bringing additional NFT cases (the "Dissent"). First, the Dissent disagreed that the "handful of company and purchaser statements cited by the order" were the "kinds of promises that form an investment contract" under Howey. The Dissent compared Impact Theory to "people that sell watches, paintings, or collectibles along with vague promises to build the brand and thus increase the resale value of those tangible items," against which the SEC does not bring enforcement actions. Second, the Dissent stated that the SEC should have considered the number of difficult question raised by NFTs and issued guidance before bringing an enforcement action.

Takeaway: The SEC continues to take an aggressive and broad view that crypto assets, including, for the first time, NFTs, are "securities." The SEC is closely monitoring statements made to investors regarding NFTs.

Activism Update

Delaware Supreme Court Clarifies Standard Of Review For Board Interference In Contested Director Elections

Summary: In ***Coster v. UIP Cos., Inc.***, the Delaware Supreme Court clarified the standard of review that applies in election contests finding that the proper standard is enhanced scrutiny under *Unocal* applied with a special sensitivity to the stockholder franchise.

Findings: Under the test set forth in *Coster*, a court should first review whether the board faced a threat to an important corporate interest or to the achievement of a significant corporate benefit. The threat must be real and not pretextual, and the board's motivations must be proper and not selfish or disloyal. Moreover, the threat cannot be justified on the grounds that the board knows what is in the best interests of the stockholders.

Second, a court should review whether the board's response to the threat was reasonable in relation to the threat posed and was not preclusive or coercive to the stockholder franchise. To guard against unwarranted interference with corporate elections or stockholder votes in contests for corporate control, a board that is properly motivated and has identified a legitimate threat must tailor its response to only what is necessary to counter the threat. The board's response to the threat cannot deprive the stockholders of a vote or coerce the stockholders to vote a particular way.

In the contested election context, when a stockholder challenges board action that interferes with the election of directors or a stockholder vote in a contest for corporate control, the board bears the burden of proof.

Takeaway: It remains to be seen whether the standard of review as clarified by the Delaware Supreme Court in *Coster* will have any meaningful impact on Delaware cases where stockholders challenge board action in connection with a contested director election. That said, it is helpful to know the standard of review that will be applied in such contexts as public companies consider measures that they can take in responding to shareholder activism campaigns.

Other Regulatory Updates

U.S. Department of Labor Proposes Increases to Salary Levels for Overtime Exemptions

The federal Fair Labor Standards Act ("FLSA") requires covered employers to pay nonexempt employees at least the minimum wage for each hour worked as well as overtime pay for all hours worked in excess of 40 in a workweek. Employees who are currently paid a salary of at least $35,568 annually ($684 per week) and work in a "bona fide executive, administrative, or professional capacity" (also referred to as the "white collar" exemptions) are not covered by the FLSA's minimum wage and overtime pay requirements.

On August 30, 2023, the U.S. Department of Labor ("DOL") announced that it intends to raise the exempt salary level from $684 per week to $1,059, meaning employees would need to earn $55,068 or more per year to be exempt from overtime pay—an increase in the salary threshold by nearly $20,000. In addition, the "highly compensated" exemption under the FLSA would be increased from $107,432 to $143,988 annually. The proposed rule has an automatic escalator in which these new salary levels would automatically increase every three years. The DOL estimates the proposed rule would restore and extend overtime protections to 3.6 million salaried workers.

The DOL's proposed rule is now subject to the notice and comment period for the 60-day period following its publication. In the meantime, employers should evaluate the impact of the increased salary thresholds on their pay practices and workforce.

Litigation Corner

Tackling the Scope of Copyright Protection for AI-Generated Works: *Stephen Thaler v. Shira Perlmutter and The United States Copyright Office*

As more individuals and businesses take advantage of artificial intelligence-based tools, due in part from its utility in generating written, visual and audio content, an emergent question has been the scope of copyright protection afforded to AI-generated material.

On August 18, 2023, Judge Beryl A. Howell of the United States District Court for the District of Columbia affirmed the U.S. Copyright Office's position that a work generated entirely by AI technology is not eligible for copyright protection. ***Stephen Thaler v. Shira Perlmutter and The United States Copyright Office,*** Case No. 1:22-cv-01564 (D.D.C. Aug. 18, 2023).

The case arises from a copyright application filed by Stephen Thaler for a digital artwork titled "A Recent Entrance to Paradise." The image was generated by an AI computer system that Thaler owned called the "Creativity Machine." The image depicts train tracks running through floral countryside. He sought to register the work for a copyright, listing the computer system as the author and explaining that the copyright should transfer to him as the owner of the machine.

The Copyright Office denied the application on the grounds that the work lacked human authorship, a prerequisite for a valid copyright to issue. Thaler challenged that denial, culminating in the court's decision to uphold the Copyright Office's determination.

As the court explained, the idea that "'authorship' is synonymous with human creation has persisted even as the copyright law has otherwise evolved." The court pointed to the 1884 Supreme Court decision in *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, holding that a photograph of Oscar Wilde was copyrightable despite use of a camera because the photographic result nonetheless "represent[ed]" the "original intellectual conceptions of the author." It then pointed to the more contemporary decision, Naruto v. Slater, where the Ninth Circuit held that a crested macaque could not sue under the Copyright Act for the alleged infringement of photographs this monkey had taken of himself, for "all animals, since they are not human" lacked statutory standing under the Act. 888 F.3d 418, 420 (9th Cir. 2018).

The court also rejected Thaler's argument that the Copyright Act's "work made for hire" doctrine is an exception to the human authorship requirement. He had asserted that non-human authorship is already recognized in the work-for-hire context, where copyright can vest in a (non-human) company in the first instance and not in the (human) author.

The court previewed a number of questions to come as we approach "new frontiers" in copyright, including:

- How much human input is necessary to qualify the user of an AI system as an "author" of a generated work;
- The scope of the protection obtained over the resultant image;
- How to assess the originality of AI-generated works where the systems may have been trained on unknown pre-existing works; and
- How copyright might best be used to incentivize creative works involving AI.

Broadly Syndicated Term Loan Not a "Security": *Kirschner v. JP Morgan Chase Bank, N.A.*

On August 24, 2023, the Second Circuit Court of Appeals issued a decision in the closely-watched appeal ***Kirschner v. JP Morgan Chase Bank, N.A., Case No. 21-2726***, holding that the broadly syndicated term loan at issue in that case was not a "security" subject to state and federal securities laws. Notably, the decision was issued after the SEC declined the Second Circuit's request to weigh in on the issue.

In affirming the Southern District's decision dismissing the plaintiff's state securities law claims, the Second Circuit applied the U.S. Supreme Court's "family resemblance" test established in *Reves v. Ernst & Young*, 494 U.S. 56 (1990). The *Reeves* test starts with a presumption that all notes are securities, but then addresses four factors: (1) the motivations that would prompt a reasonable seller and buyer to enter in the transaction; (2) the breadth of the plan of distribution; (3) the reasonable expectations of the investing public; and (4) the existence of another regulatory scheme to reduce risk. The Second Circuit concluded the notes at issue were *not* securities because, among other things, (1) the notes were not freely transferrable to the general public, (2) the lenders were sophisticated parties, experienced in extending credit without reliance upon agents or other lenders, and (3) the notes were secured by collateral and governed by federal policy on syndicated loans. This ruling is significant because it affirms the long-standing view that syndicated loans are not securities. A ruling to the contrary, which would have subjected banks and other financial institutions to federal and state securities law requirements, could have dramatically disrupted the market.

In addition to this significant holding, the Second Circuit also determined that the District Court had jurisdiction over the claims under the Edge Act, which grants federal courts jurisdiction over civil suits involving Edge Act banks that arise out of "transactions involving [] international or foreign banking." The Court found that any "direct" banking interaction between an Edge Act bank and a foreign entity—whether central to the transaction or merely a happenstance—is sufficient to give a federal court subject matter jurisdiction over a dispute relating to that transaction.

Arkansas Teachers Retirement System v. Goldman Sachs Group Inc.: Raising the Bar for Class Certification in Securities Fraud Cases

On August 10, 2023, the Second Circuit Court of Appeals issued an important decision in ***Arkansas Teachers Retirement System et al. v. Goldman Sachs Group Inc. et al.*, Case No. 22-484**, reversing an order from the district court certifying a class of investor plaintiffs in a securities fraud action.

The issue on appeal concerned whether defendants had successfully rebutted the presumption found in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), which allows plaintiffs to invoke a presumption of reliance based on a fraud-on-the-market theory for purposes of class certification. This presumption may be rebutted by showing that the alleged misrepresentations did not affect the company's stock price. Without this presumption, plaintiffs must establish that each individual class member relied on the alleged misrepresentations when they purchased their stock.

This action began over a decade ago when a group of investors in Goldman Sachs Group, Inc. ("Goldman") filed a class action complaint against Goldman and other defendants for allegedly violating Section 10(b) of the Securities Exchange Act. Plaintiffs alleged that the defendants maintained an artificially inflated stock price by making misleading generic statements about Goldman's conflicts management and aspirational business principles. According to plaintiffs, they were entitled to avail themselves of the *Basic* presumption because Goldman's stock price dropped once the purported truth about these conflicts was revealed when investigations were announced against Goldman for allegedly failing to disclose conflicts of interest linked to several collateralized debt obligation transactions. Goldman, in turn, argued the *Basic* presumption was unwarranted here because event studies showed no impact in Goldman's stock price when Goldman made these purportedly misleading statements.

After over a decade of litigation and several appeals, this most recent decision applied the U.S. Supreme Court's 2021 decision in the same action. There, the Supreme Court held that the "inference [] that the back-end price drop equals front-end inflation [] starts to break down" when the earlier misrepresentation is generic and the later corrective disclosure is specific, and that, "[u]nder those circumstances it is less likely that the specific disclosure actually corrected the generic misrepresentation . . . ." *Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys. (Goldman)*, 141 S. Ct. 1951, 1961 (2021). Following the Supreme Court's "mismatch framework", the Second Circuit held that in this case there was a "considerable gap in specificity" between the alleged generic misstatements and purported corrective disclosures. The court explained that in an inflation maintenance case "a plaintiff cannot (a) identify a specific back-end, price-dropping event, (b) find a front-end disclosure bearing on the same subject, and then (c) assert securities fraud, unless the front-end disclosure is sufficiently detailed in the first place." Case No. 22-484, Slip Op. at 55, 62. For these reasons, the Second Circuit reversed the district court's decision to certify the class, finding that Goldman had sufficiently demonstrated that the alleged misrepresentations did not affect Goldman's stock price, and had therefore rebutted the *Basic* presumption. *Id.* at 62-70.

This decision is significant because it confirms that defendants will have a meaningful opportunity to rebut the fraud-on-the-market presumption of reliance to defeat class certification in securities fraud cases and it will make it more difficult for plaintiffs to certify a class in cases alleging generic misstatements.

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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About Paul Hastings

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