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SEC Disclosure Issues & Developments for FPIs and Preparing Your 20-F Filing

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Agenda

- MD&A and Financial Statement Considerations
- Key Performance Indicators and Non-GAAP Measures
- Risk Factors
- Russia/Ukraine Disclosures
- Director and Officer Questionnaires
- New Requirements this Year
- Areas of Focus for SEC Comments
- SEC and PCAOB Implementation of the Holding Foreign Companies Accountable Act
- Expected Areas of SEC Focus

MD&A and Financial Statement Considerations

MD&A Requirements

- Purpose of the management discussion and analysis (“MD&A”) is to provide investors with management’s explanation of factors that have materially affected the issuer’s historical financial condition and results of operations and an assessment of known trends and uncertainties that management anticipates will have a material effect in the future
- If applicable, a foreign private issuer should refer to the reconciliation to US GAAP and discuss any aspects of US GAAP not covered in the reconciliation that it believes are necessary to understanding the financial statements as a whole



MD&A Requirements

- Companies may want to consider addressing topics of particular interest to investors in their MD&A, including ESG matters such as climate change and human capital, even if pending rulemaking in those areas is not yet in effect
- Disclose known trends or uncertainties that has had, or is reasonably likely to have, a material impact on net sales or revenue
- Companies are still required to disclose the impact of inflation and changing prices notwithstanding the elimination of specific requirements in 2020
- Given impact of inflation on the economy this year, many companies may need to discuss the effect of inflation on their businesses in the MD&A, as well as uncertainties related to potential recession

Recent Amendments to MD&A

- The SEC recently adopted changes to Form 20-F in order to:
 1. Eliminate duplicative disclosures, and
 2. Modernize and enhance MD&A disclosures for the benefit of investors, while simplifying compliance efforts for registrants
- Compliance date for most foreign private issuers will be this year's upcoming Form 20-F filing

Results of Operations

- Companies must disclose known events or trends that are reasonably likely to cause a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in:
 - Costs of labor or materials
 - Price increases
 - Inventory adjustments
- Companies must disclose the reasons underlying material changes in net sales or revenues
- If line item changes are material, disclose the underlying reasons for these material changes in quantitative and qualitative terms
- Elimination of specific disclosure with respect to the impact of inflation and changing prices
 - Companies are still required to discuss these matters if they are part of a known trend or uncertainty that has had, or is reasonably likely to have, a material impact on net sales or revenue
 - This allows companies to focus on material disclosure tailored to their business, facts and circumstances

Off-Balance Sheet Arrangements

- Companies should consider off-balance sheet arrangements within the broader context of their MD&A
- Companies should discuss commitments and obligations arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on their:
 - Financial condition
 - Changes in financial condition
 - Revenues or expenses
 - Results of operations
 - Liquidity
 - Cash requirements [or]
 - Capital resources

Critical Accounting Estimates

- If line item changes are material, disclose the underlying reasons for these material changes in both quantitative and qualitative terms
- Disclosure of critical accounting estimates explicitly required
 - Qualitative and quantitative information necessary to understand
 - The estimation uncertainty
 - Impact the critical accounting estimate has or is reasonably likely to have on financial condition or results of operations

Financial Statement Requirements

- Annual audited and interim unaudited financial statements in a registration statement may be prepared using either US GAAP, IASB IFRS, or local GAAP
 - Audited financial statements must be accompanied by an audit report
- Items that frequently require discussion and quantification as a result of the reconciliation requirements include stock compensation, impairments, deferred or capitalized costs, foreign currency translation, derivatives, consolidation, retirement obligations, research and development, tax expenses or deferrals and revenue recognition

Periods for Rule 3-05 Financial Statements

PERIODS TO BE PRESENTED	
Significance Level	Required Financial Periods
If all significance tests are less than 20%	No Rule 3-05 Financial Statements required
If any significance test is greater than 20% but none exceed 40%	One year of audited financial statements; unaudited financial statements for most recent interim period (but no corresponding prior year interim period)
If any significance test is greater than 40%	Two years of audited financial statements and unaudited financial statements for most recent, and corresponding prior year, interim period

Practical Considerations

Financial disclosures *re* acquired businesses

The Amended Rules:

- Ease burdens and costs involved in preparation of financial statements
 - Maximum of two (*instead of three*) years of audited annual financials
 - Corresponding prior year interim period required only at more than 40% significance
 - Increased significance threshold for dispositions from 10% to 20%
 - Permit abbreviated financials for acquisitions of a component of an entity
 - Allow omission of target financials once business included in registrant's post-acquisition financial statements for nine months or one year
 - Eliminated required three years of audited annual financials if real estate operation acquired from a related party

Practical Considerations

Financial disclosures *re* acquired businesses (*cont'd*)

The Amended Rules:

- Assist registrants to make more meaningful significance determinations
 - Using aggregate worldwide market value for investment test corrects fair value vs. book value mismatch in investment test under Old Rule
 - Adding revenue component to income test prevents anomalous results, especially for registrants with net loss or low net income
- Introduce new obligations and challenges for registrants
 - Management's Adjustments, while optional, require management to present reasonably estimable synergies and dis-synergies of the acquisition and to have a reasonable basis for each adjustment
 - Requires management to state that pro formas reflect all Management's Adjustments that are, in their opinion, necessary to a fair statement of pro formas
 - Registrants will need to get used to presenting pro formas under Amended Rules, including presentation of "Transaction Accounting Adjustments," "Autonomous Entity Adjustments" and related explanatory notes

Practical Considerations

Financial disclosures *re* acquired businesses (cont'd)

A few practical reminders and tips for reporting companies:

- Assess how Amended Rules impact your disclosures
 - Public companies that engage or are considering engaging, in acquisitions or dispositions should involve their accounting departments and counsel
- Pay attention to the SEC's reminder that financial disclosures must be complete and not misleading:
 - *"In adopting these changes, we note that regardless of the number of years presented, if trends depicted in Rule 3-05 Financial Statements are not indicative or are otherwise incomplete, 17 CFR 210.4-01(a) ('Rule 4-01(a)') requires that a registrant provide 'such further material information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.'"*
- Remember that Rule 3-13 waiver requests are available and can be utilized by registrants

Key Performance Indicators and Non-GAAP Measures

Key Performance Indicators

- On January 30, 2020, the SEC provided guidance regarding the disclosure of key performance indicators (“KPIs”) and metrics used in the MD&A section.
 - Similar to earlier concerns raised by the SEC with respect to the use of non-GAAP financial measures.
- The SEC’s Division of Enforcement has taken action in recent years against companies relating to the use of misleading key performance metrics.
- Item 303(a) of Regulation S-K requires discussion of “such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations.” In addition, Instruction 1 to Item 303(a) requires discussion of “statistical data that the registrant believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of operations.”
- Guidance reminds each registrant that uses metrics in its MD&A that, under existing requirements, it “need[s] to include such further material information, if any, as may be necessary in order to make the presentation of the metric, in light of the circumstances under which it is presented, not misleading.”

Key Performance Indicators *(cont'd)*

- SEC generally expects that a metric be accompanied by the following disclosure:
 - A clear definition of the metric and how it is calculated;
 - A statement indicating the reasons why the metric provides useful information to investors; and
 - A statement indicating how management uses the metric in managing or monitoring the performance of the business.
- If a company changes the calculation method or presentation of a metric from one period to another or otherwise, it should consider disclosing, to the extent material:
 - The differences in the way the metric is calculated or presented compared to prior periods;
 - The reasons for the change;
 - The effects of the change on the amounts or other information being disclosed or previously reported; and
 - Other differences in methodology and results that would reasonably be expected to be relevant to an understanding of the company's performance or prospects.
- Depending on significance, it may be necessary to recast prior metrics to conform to the current presentation following a change in methodology.

COVID-19 Trends

- Since the onset of the COVID-19 pandemic, the SEC Staff has issued many comments on registrants' accounting and disclosures related to COVID-19
- Registrant's disclosure should include the impact of the COVID-19 impact in the MD&A section
- Do not just provide general statements about uncertainties created by the pandemic; instead provide disclosure tailored to the registrant's particular facts and circumstances
- Registrants that want to adjust GAAP results as a result of the effects of the COVID-19 pandemic should limit non-GAAP adjustments to those that are clearly related to the pandemic

Sample SEC Comment

We note that the majority of your sales are in domestic markets and your most significant customer operates primarily in [Location X]. Given the continued rise in COVID-19 cases throughout the United States, including [Location X], please ensure that your MD&A disclosures in your upcoming Form 10-Q for the period ended June 30, 2020, address the matters described in CF Disclosure Guidance: Topic 9A. Please similarly revise your risk factor and financial statement disclosures as appropriate.

COVID-related Non-GAAP Measures

- When you take a defined GAAP measure and either exclude items that are components or include items that aren't components, the result is a non-GAAP financial measure.
- In late March 2020, SEC Staff at the Division of Corporation Finance issued CF Disclosure Guidance: Topic No. 9, *Coronavirus (COVID-19)* ("Topic 9 Guidance"), in which they frowned upon companies giving way to any pandemic-driven pressure to "present ... non-GAAP financial measures or metrics for the sole purpose of presenting a more favorable view of the company."
- Instead, the SEC Staff encouraged companies to share "why management finds the measure or metric useful and how it helps investors assess the impact of COVID-19 on the company's financial position and results of operations."

Risk Factors

The background features a stylized world map composed of a grid of small blue dots. Overlaid on this map are various data visualization elements: vertical lines of varying heights, some with circular markers at the top, and scattered individual circles in red, white, and blue. The overall color palette is dark blue with accents of red and white.

Risk Factors

- If the risk factor discussion exceeds 15 pages, a risk factor summary of not more than two pages is needed
- Risks relating to supply chain, inflation, or recession must be addressed in upcoming annual reports
- Given the heightened focus on climate change, companies should consider whether they need to add or expand or otherwise update climate change risk factor disclosure
- Cybersecurity and data privacy continue to be risks many companies must address in their annual reports
- COVID-19 risks may have evolved over time, so these points may need modification, especially as a result of vaccines, vaccine hesitancy, variants, and break-through infections

Russia/Ukraine Disclosures





Russia/Ukraine Disclosures

- To the extent the Russian war in Ukraine or related sanctions is a material risk to a company, that will need to be discussed in the company's risk factors
- May 2022: Staff issued a sample comment letter and guidance to companies regarding disclosures pertaining to Russia's invasion of Ukraine and related supply chain issues
- Consider whether any such disclosure would be appropriate for risk factors, MD&A, business discussion (including human capital management), or financial statement footnotes
- Companies should assess whether they need to update their disclosure controls and procedures or their internal control over financial reporting to be sure they are encompassing the Russia/Ukraine conflict

Director and Officer Questionnaires

Director and Officer Questionnaires

- Questionnaires should include obtaining the director's or nominee's consent to disclosure
- Consider:
 - Updates in light of the new universal proxy rules
 - Including diversity-related questions
- Companies may want to update Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA) questions in their director and officer questionnaires

New Requirements This Year

Recoupment of Erroneous Compensation

- New SEC Rule 10D-1 requires securities exchanges to prohibit listing of any security of a company that does not adopt and implement a written policy requiring “clawback” of certain incentive-based executive compensation
 - Dodd-Frank mandate
- Recovery must equal the amount of incentive compensation paid in error, based on an accounting restatement correcting ***either***
 - an error in previously issued financial statements that is material to the previously issued financial statements (“Big R” restatement)
 - or***
 - an error that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period (“little r” restatement)

Recoupment of Erroneous Compensation *(cont'd)*

- With very few exceptions, clawback listing standards apply to all listed companies, including:
 - Foreign private issuers, smaller reporting companies, emerging growth companies, business development companies, and companies that list only debt or preferred securities, to the extent they have securities listed on a national securities exchange
- Three-year lookback from date restatement required
- New disclosures relating to clawback policies and compliance with such policies

Recoupment of Erroneous Compensation *(cont'd)*

- Clawback not limited to named executive officers
- Clawback applies to any individuals serving as executive officers of listed company at any time during the performance period for that incentive-based compensation
- Recovery of the excess incentive-based compensation is on a “no-fault” basis
 - Clawback not limited to executive officers who engaged in misconduct or were directly involved with the accounting error
- Clawback applies, even if not an executive officer at the time company seeks recovery

Clawback Transition Period

**No later than
February 27, 2023**

- Securities exchanges must file proposed listing standards

**No later than one
year after November
28, 2022**

- Clawback listing standards must be effective

**Within 60 days of
listing standards
becoming effective**

- Listed companies must adopt a compliant clawback policy

**Applicability of the
effective date of the
listing standard on
compensation**

- Clawback requirements will apply to erroneously awarded compensation received on or after the effective date

**Applicability of the
effective date of the
listing standards on
disclosure**

- New clawback disclosures are required in proxy or information statements and Exchange Act annual reports filed on or after the effective date

Nasdaq Board Diversity Standards

- New rules require Nasdaq-listed companies to have, or to explain why they do not have, at least two diverse directors, including:
 1. At least one director who self-identifies as female (regardless of designation at birth) and
 2. At least one director who self-identifies as either an underrepresented minority or as LGBTQ+
- Foreign issuers (including foreign private issuers) may satisfy the board-composition requirement by having two directors who self-identify as female
- The new rules also require Nasdaq-listed companies to annually disclose diversity information in a standardized board diversity matrix

EDGAR Submission of “Glossy” Annual Reports

- June 2022: SEC updated electronic filing requirements which, among other things, amended Rule 14a-3(c) to make it mandatory for glossy annual reports to be submitted to the SEC
- Must capture the graphics, styles of presentation, and prominence of disclosures contained in the reports
- **Beginning January 11, 2023:** Mandatory electronic filing of glossy annual reports
- Foreign private issuers that furnish their glossy annual report in response to the requirements of Form 6-K will also have to do so via EDGAR
- Companies should add this requirement, and related coordination with their service providers, to their proxy season calendars

Areas of Focus for SEC Comments

SEC Staff Disclosure Areas of Focus

- COVID-19
- Climate Change
- LIBOR Cessation
- Cybersecurity
- China-based Issuers

SEC Staff Comments: COVID-19

- At the beginning of the pandemic, many companies addressed their risk factor disclosures by including a generic pandemic-related risk. As time has passed, the expectation is that an issuer will update specific, tailored risks

Sample SEC comment

We note your disclosure that the extent to which your operations may be impacted by the COVID-19 pandemic will depend largely on future developments, which are highly uncertain and cannot be accurately predicted, including new information that may emerge concerning the severity of the outbreak and actions by government authorities to contain the outbreak or treat its impact. Please amend your risk-factor disclosure to provide more detailed risks related to the COVID-19 pandemic, tailored to your specific facts and circumstances. For guidance, see CF Disclosure Guidance: Topic No. 9 (25 March 2020)

- Review existing risk factors, and consider whether these should be revised to address events that already have come to pass, and to address new risks that have been identified as the pandemic has become more prolonged and its effects more wide-reaching
- COVID-19 risks may have evolved over time requiring modification, especially as a result of vaccines, vaccine hesitancy, variants and break-through infections

SEC Staff Comments: Climate Change

- Division of Corporation Finance Sample Letter

Sample SEC Comment

Disclose the material effects of transition risks related to climate change that may affect your business, financial condition, and results of operations, such as policy and regulatory changes that could impose operational and compliance burdens, market trends that may alter business opportunities, credit risks, or technological changes.

- Re-read the 2010 Commission Guidance Regarding Disclosure Related to Climate Change and consider whether revised or enhanced disclosure is required
- Evaluate disclosure controls and procedures with respect to climate change

SEC Enforcement

- Climate and ESG Task Force
 - “The initial focus will be to identify any material gaps or misstatements in issuers’ disclosure of climate risks under existing rules.”
- Cyber Unit
 - “The Cyber Unit will focus the Enforcement Division’s substantial cyber-related expertise on targeting cyber-related misconduct...”

SEC Enforcement *(cont.)*

- Pearson plc, a London-based educational publishing and services company, learned of a cyber breach in March 2019
- The company's July 2019 semi-annual report on Form 6-K filed with the SEC contained the same risk factor disclosure as the prior report, describing a hypothetical risk of a data breach:
 - "Risk of a data privacy incident or other failure to comply with data privacy regulations and standards and/or a weakness in information security, including a failure to prevent or detect a malicious attack on our systems, could result in a major data privacy or confidentiality breach causing damage to the customer experience and our reputational damage, a breach of regulations and financial loss."
- The SEC found that the company made misleading statements and omissions about the data breach

SEC Guidance

- 2010 Commission Guidance Regarding Disclosure Related to Climate Change
 - Specific risks faced as a result of climate change legislation or regulation
 - Business trends: legal, technological, political and scientific developments regarding climate change
 - Indirect risk from climate change impact on a registrant’s reputation
- 2018 Commission Statement and Guidance on Public Company Cybersecurity Disclosures
 - Provides a list of issues to consider when drafting cybersecurity risk factor disclosure
 - “In meeting their disclosure obligations, companies may need to disclose previous or ongoing cybersecurity incidents or other past events in order to place discussions of these risks in the appropriate context.”

SEC Staff Comments to China-Based Companies

- SEC Staff recently published a sample comment letter to China-based companies
- “For China-based registrants with ongoing periodic reporting obligations or that are engaged in capital raising transactions via takedowns from an effective shelf registration statement, the Division expects your prospectus supplements or incorporated periodic or current reports, and future periodic reports, to disclose the information and risks discussed [in the sample comment letter].”

Sample SEC Comment

Provide a description of how cash is transferred through your organization and disclose your intentions to distribute earnings or settle amounts owed under the VIE agreements. State whether any transfers, dividends, or distributions have been made to date between the holding company, its subsidiaries, and consolidated VIEs, or to investors, and quantify the amounts where applicable. Provide cross-references to the condensed consolidating schedule and the consolidated financial statements.

SEC and PCAOB Implementation of the Holding Foreign Companies Accountable Act

Setting the Stage

- On December 18, 2020, President Trump signed the Holding Foreign Companies Accountable Act (the “HFCAA”) into law.
- Prohibits foreign issuers from listing and trading their securities on any US securities exchange (e.g., NYSE or Nasdaq) or over-the-counter if authorities in the foreign issuer’s home jurisdictions prohibit the Public Company Accounting Oversight Board (the “PCAOB”) from inspecting the issuer’s registered public accounting firm.
- Aimed at US-listed Chinese companies
- Puts US-listed Chinese companies in a difficult position
- Compliance may be impossible
- Chinese regulations impose limitations on the inspection of public accounting firms based in China and Hong Kong by foreign regulators, including the PCAOB

HFCAA: Disclosure and PCAOB Inspection

- HFCAA triggered if issuer retains a registered public accounting firm that has a branch or office that:
 - (i) is located in a foreign jurisdiction, and
 - (ii) the PCAOB is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction
- Also requires issuers to submit to the SEC documentation showing that the issuer is not owned or controlled by a governmental entity
- Issuers identified by the SEC must be audited by an accounting firm that the PCAOB can inspect or investigate
- Failure to allow PCAOB inspection for two consecutive years, SEC prohibits trading on a national securities exchange or through any other method regulated by the SEC, including over-the-counter trading
- Trading prohibition can be removed:
 - Issuer certifies it has retained a registered public accounting firm that the PCAOB has inspected to the satisfaction of the SEC
- Failure to comply again = trading suspended for a minimum of 5 years

HFCAA: Additional Disclosure Requirements

- In any year when an issuer uses a PCAOB-Identified Firm to prepare its audit report, the issuer must disclose in its annual report:
 - That a non-PCAOB inspected accounting firm prepared its audit report;
 - Percentage of shares of the issuer owned by governmental entities;
 - Whether governmental entities in the foreign jurisdiction of the accounting firm have a controlling financial interest in the issuer;
 - Name of each official of the Chinese Communist Party who is a member of the board of directors of the issuer; and
 - Whether the constitutive documents of the issuer contain any charter of the Chinese Communist Party, including the text of any such charter.

Implementation by the SEC and PCAOB

- Interim final rulemaking for the disclosure requirement adopted by the SEC on March 18, 2021
- PCAOB adopted a framework to make its determinations regarding its ability to inspect or investigate audit firms as required by the HFCAA, on September 22, 2021
- On December 2, 2021, the SEC adopted amendments to finalize the interim final rules, at the same time unexpectedly adopting final rules to implement the HFCAA's trading prohibition without the anticipated notice and comment process
- PCAOB published its first report on December 16, 2021, identifying registered public accounting firms in mainland China and Hong Kong as PCAOB-Identified Firms
- As part of the 2023 omnibus appropriations bill, the timeline for a potential trading prohibition was shortened from three years to two years

Some Options for US-listed Chinese Companies

- Up to two years before non-compliance would compel a delisting
- Options available to a US-listed Chinese issuer:
 - Going private
 - Voluntarily delisting and deregistering (“going dark”)
 - Secondary listing outside of the United States, such as Hong Kong

Expected Areas of SEC Focus

The background of the slide is a dark blue gradient. It features a stylized world map composed of a grid of small dots. Overlaid on the map and extending across the slide are various data visualization elements, including vertical bars of varying heights, horizontal lines, and small circles in shades of red, white, and blue. The overall aesthetic is modern and data-driven.

Current Rules and Guidance on Climate Change Disclosure

- Principles-based approach
 - Provides companies with flexibility
 - Resulting disclosure is tailored and company-specific
- 2010 Climate change guidance – disclosure of material information
 - Impact of climate change legislation and regulation
 - Impact of international accords and treaties on climate change
 - Indirect consequences or opportunities
 - Physical impact of climate change on business and operations
- SEC Comment Letters/September 2021 sample letter

Proposed Rules on Climate Change Disclosure

- Considerations for 2023 proxy and annual report disclosure:
 - Expand discussions on climate change risk and related climate change risk management
 - Discuss plans and costs for climate change mitigation strategies in MD&A
 - Address the extent to which the company currently, or plans to, calculate GHG emissions
 - Address whether the company currently has, or is planning to have, climate change goals
- Coordinate disclosure in annual report, proxy statement and any sustainability report

Current and Proposed Rules on Human Capital Disclosure

- 2020 – Human Capital added as a line item to Regulation S-K (Item 101(c))
- Wide variation in disclosure, with some common themes:
 - Diversity, equity and inclusion (DEI)
 - Geographic location of employees
 - Recruitment, turnover, retention, training and engagement
 - Remote/hybrid work and COVID-19
- SEC Regulatory Agenda – October 2022

Director Expertise and Governance

- Proposed rules relating to director expertise, governance and disclosure
 - **Cybersecurity Expertise** (Item 407(j))
 - Specifically name any director having “cybersecurity expertise”
 - Provide detail on the nature of the expertise
 - **Climate-Related Risk Expertise** (Item 1501)
 - Specify whether any director has “climate-related risks” expertise
 - Provide detail on the nature of the expertise
- Fall 2022 SEC comment letters – board leadership structure and risk oversight

Rule 10b5-1

- Rule 10b5-1 specifies that a sale constitutes trading on the basis of material non-public information (MNPI) when the person making the sale was aware of MNPI at the time the sale was made
- Rule 10b5-1, adopted in August 2000, codifies the position of the Securities and Exchange Commission (SEC) that awareness, not use, of MNPI is sufficient to establish liability in insider trading cases
- The rule creates a mechanism whereby any person or entity can enter into a trading plan that will provide an affirmative defense to a claim that a trade occurred “on the basis of” MNPI

Cooling–Off Periods

- Does not apply to issuers
- For directors and executive officers (as defined by Rule 16a-1(f))
 - Trades may not begin until the later of:
 - 90 days, and
 - 2 business days after filing of annual or quarterly report for the quarter during which the plan was adopted (not to exceed 120 days)
 - Practical difficulties relying on SEC filings for 10b5-1 plans
- For all other persons (e.g., employees, large stockholders) cooling-off period of 30 days
- Modification constitutes termination of plan; requires starting a new cooling-off period

D&O Certifications

- Directors and executive officers required to make certification in plan that:
 - Individual is not aware of any MNPI, and
 - Plan is being adopted in good faith and not part of a plan or scheme to evade the prohibitions of the rule

No Overlapping Plans

- Does not apply to issuers, but to all others seeking to rely upon the affirmative defense of the rule
- May not enter into a new plan while having another Rule 10b5-1 plan outstanding (with 3 exceptions):
 - separate plans with different brokers that together constitute a single plan permitted
 - “back-to-back” plans are permitted if transactions under the second plan do not begin until transactions under the first plan are completed or expire (new cooling-off period required if earlier plan terminated)
 - “sell-to-cover” plans to satisfy tax withholding only upon vesting are not considered outstanding or additional plans (e.g., vesting of RSUs)

Acting in Good Faith

- To have the benefit of the affirmative defense, person must enter into plan in good faith (existing requirement)
- Must now also act in good faith with respect to the plan
- New requirement intended to deter manipulation of timing of issuer disclosures by those in a position to do so

Supplemental Materials

Read more:

- [What's the Deal? – Foreign Private Issuers](#)
- [SEC Proposes New Rules on Share Repurchase Disclosure](#)
- [SEC Adopts Interim Final Rules To Implement the Holding Foreign Companies Accountable Act](#)
- [SEC Approves Nasdaq Board Diversity Rule](#)
- [SEC Issues MD&A Guidance](#)



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Supplemental Materials

SEC Reporting Issues for Foreign Private Issuers

SEC Reporting Issues for Foreign Private Issuers (Portfolio 5507)

Click [here](#) to learn more

- This Portfolio discusses the securities laws applicable to foreign private issuers that access the U.S. capital markets and the integrated disclosure system. The most recent edition includes updates related to foreign private issuers, SEC amendments, and requirements for financial instruments that are guaranteed and for guarantor financial information.

Description

For the best part of the 20th century and into the 21st century, the U.S. equities market has been the deepest, broadest, and largest equities market in the world. It is only natural to expect that an increasing number of foreign enterprises would seek to raise capital in the United States. In fact, it has become commonplace for foreign private issuers to execute public offerings in the United States. SEC reporting requirements for foreign private issuers have been influenced by the need to harmonize traditionally strong and precise U.S. disclosure standards with those of other increasingly significant, and now mature, foreign capital markets.

Bloomberg Tax & Accounting Portfolio 5507-4th, SEC Reporting Issues for Foreign Private Issuers, serves as a practical resource for both practitioners and their clients (foreign private issuers). The Portfolio is divided into two principal sections: “Regulatory Framework Applicable to Foreign Private Issuers” and “Preparing Annual Report on Form 20-F: A Guide.”

The first section discusses the securities laws applicable to foreign private issuers that access the U.S. capital markets and the integrated disclosure system applicable to foreign private issuers. Foreign private issuers that choose to access the U.S. capital markets may offer their securities in a private placement exempt from the registration requirements imposed by the U.S. securities laws. Alternatively, foreign private issuers may conduct a public offering in the United States by registering an offering of their securities pursuant to the Securities Act of 1933, as amended, and also register their securities for listing or trading on a U.S. securities exchange pursuant to the Securities Exchange Act of 1934, as amended. For foreign private issuers that have become U.S. reporting companies, Form 20-F is the principal form for regular reporting.

The second section of the Portfolio provides a detailed description of Form 20-F, with a focus on areas that have been revised or that are frequently the subject of SEC comments. This section also provides insight on the kind and quality of disclosure expected by the SEC. The discussion emphasizes financial disclosure, such as Operating and Financial Review and Prospects (which is very similar to Management’s Discussion and Analysis) and various accounting hot buttons. In addition, the analysis focuses on both ease of use for foreign private issuers with limited U.S. securities law experience and the detailed description that will be critical for U.S. securities lawyers and bankers who may not regularly work with foreign private issuer clients.

This Portfolio may be cited as Bloomberg Tax & Accounting Portfolio 5507-4th, Pinedo, SEC Reporting Issues for Foreign Private Issuers.



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