

Market Trends 2022/2023: Financial Disclosures for Merger & Acquisition Transactions

A Practical Guidance® Practice Note by Anna T. Pinedo, Laura D. Richman, Gonzalo Go, Kevin F. Winnie, and Chase D. Smith, Mayer Brown LLP



Anna T. Pinedo
Mayer Brown LLP



Laura D. Richman
Mayer Brown LLP



Gonzalo Go
Mayer Brown LLP



Kevin F. Winnie
Mayer Brown LLP

This practice note discusses the main amendments to the financial disclosure requirements for acquisitions and dispositions of businesses by U.S. reporting companies, which took effect in January 2021. The amendments aim to improve the quality and relevance of the information provided to investors, reduce the complexity and costs of preparing the disclosures, and promote capital formation. The practice note highlights some of the key changes to the significance tests, the pro forma financial information, the acquired business financial statements, the real estate operations financial statements, the foreign business and foreign private issuer financial statements, and the smaller reporting company and Regulation A financial statements. The practice note also provides some examples of SEC disclosures that illustrate how the reporting companies have implemented the amendments and offers some recommendations on how to prepare and enhance these disclosures.

[Click here](#) For full access to this Practical Guidance® document.

Anna T. Pinedo, Partner, Mayer Brown LLP

Anna Pinedo is a partner in Mayer Brown's New York office and co-leader of the Global Capital Markets practice. She concentrates her practice on securities and derivatives. Anna represents issuers, investment banks/financial intermediaries and investors in financing transactions, including public offerings and private placements of equity and debt securities, as well as structured notes and other hybrid and structured products.

She works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products. She has particular financing experience in certain industries, including technology, telecommunications, healthcare, financial institutions, REITs and consumer and specialty finance. Anna has worked closely with foreign private issuers in their securities offerings in the United States and in the Euro markets. She also works with financial institutions in connection with international offerings of equity and debt securities, equity- and credit-linked notes, and hybrid and structured products, as well as medium term note and other continuous offering programs.

In the derivatives area, Anna counsels a number of major financial institutions acting as dealers and participants in the commodities and derivatives markets. She advises on structuring issues as well as on regulatory issues, including those arising under the Dodd-Frank Act. Her work focuses on foreign exchange, equity and credit derivatives products, and structured derivatives transactions. Anna has experience with a wide range of transactions and structures, including collars, swaps, forward and accelerated repurchases, forward sales, hybrid preferred stock and off-balance sheet structures. She also has advised derivatives dealers regarding their Internet sites and other Internet and electronic signature/delivery issues, as well as on compliance matters.

Anna regularly speaks at conferences and participates in panel discussions addressing securities law issues, as well as the securities issues arising in connection with derivatives and other financial products. She is co-author of the leading capital markets treatise, *Corporate Finance and the Securities Laws*, published by Wolters Kluwer (sixth ed., updated 2020, 2022); co-author of *A Deep Dive Into Capital Raising Transactions*, published by the International Financial Law Review (IFLR) (2020); co-author of *JOBS Act Quick Start* (IFLR), 2013; updated 2014, 2016); contributor to *OTC Derivatives Regulation Under Dodd-Frank: A Guide to Registration, Reporting, Business Conduct, and Clearing* (Thomson Reuters, first ed. 2014, second ed. 2015, third ed. 2016, fourth ed. 2017, 2020-2021 ed.); co-author of *Considerations for Foreign Banks Financing in the US* (IFLR, 2012; updated 2014, 2016); co-author of *Liability Management: An Overview* (IFLR, 2011, updated 2015); co-author of *Structuring Liability Management Transactions* (International Financial Law Review, 2018); co-author of *Covered Bonds Handbook*, published by Practising Law Institute (PLI) (2010, updated 2012-2014); co-author of the treatise *Exempt and Hybrid Securities Offerings*, published by PLI (2009, second ed. 2011, updated 2014, third ed. 2017, fourth ed. 2022); and co-author of *BNA Tax and Accounting Portfolio: SEC Reporting Issues for Foreign Private Issuers* (BNA Accounting Policy and Practice Series, 2009, second ed. 2012, third ed. 2016, fourth ed. 2020). Anna is also a contributing author to *Broker-Dealer Regulation* (2011, second ed. 2012, updated 2020), published by PLI. She co-authored "The Approaches to Bank Resolution," a chapter in *Bank Resolution: The European Regime* (Oxford University Press, 2016). Anna contributed to *The Future of Bank Funding and Capital: Solutions for Issuers, Opportunities for Investors* (IFR Market Intelligence, 2009). Additionally, Anna co-authored "The Ties that Bind: The Prime-Brokerage Regulation," a chapter in *Global Financial Crisis* (Globe Law and Business, 2009); "The Law: Legal and Regulatory Framework," a chapter in *PIPEs: A Guide to Private Investments in Public Equity* (Bloomberg, 2006); and "The Impact Security: Reimagining the Nonprofit Capital Market," a chapter in *What Matters: Investing in Results to Build Strong, Vibrant Communities* (Federal Reserve Bank of San Francisco and Nonprofit Finance Fund, 2017). Anna is a contributor to PLI's "BD/IA: Regulation in Focus" blog.

Anna is a member of the American Bar Association's (ABA) Committee on the Federal Regulation of Securities, a member of the subcommittee on Disclosure and Continuous Reporting, chair of the subcommittee on Securities Registration, chair of the subcommittee on Annual Review, and a member of the task force on the future of securities regulation.

She has participated in the drafting committee for the ABA's comment letters on such topics as securities offering reform, revisions to the definition of accelerated filer and smaller reporting company, amendments to the accredited investor definition; amendments to the exempt offering framework; and various JOBS Act-related and disclosure effectiveness related matters. Anna also is a member of the ABA Committee on the Regulation of Futures and Derivatives Instruments. Anna is a chair of the Structured Products Association Legal, Regulatory and Compliance Executive Committee. She is a member of the Mortgage Bankers Association's Mortgage REIT Council and a member of the MBA's Secondary & Capital Markets Committee.

Anna is an adjunct professor at the George Washington University School of Law and member of the George Washington University Center for Law, Economics & Finance Advisory Board. She is a member of the Visiting Committee of the Law School of the University of Chicago. Anna was a member of the University of Chicago Legal Forum during her time at the University of Chicago Law School.

Laura D. Richman, Counsel, Mayer Brown LLP

Laura Richman's wide-ranging corporate and securities practice has a strong focus on corporate governance issues and public disclosure obligations. Laura's practice includes Securities and Exchange Commission reports, such as proxy statements and annual, quarterly and current reports. She advises on executive compensation disclosure, insider trading regulation and Dodd-Frank and Sarbanes-Oxley compliance. Laura regularly counsels clients on ongoing SEC rulemaking impacting public companies, including with respect to climate change, cybersecurity, human capital management and board diversity. Laura represents listed company clients with respect to stock exchange compliance matters. She advises clients on governance policies and other board and shareholder matters. In addition, her practice includes representing clients on transactions such as securities offerings and mergers and acquisitions, as well as providing general securities, corporate, limited liability company and contract advice. Laura has practiced with Mayer Brown since 1981.

With regard to securities transactions, Laura represents issuers and underwriters in public and private offerings of debt and equity securities (both initial public offerings and offerings of seasoned, public companies), including guidance on federal and state securities law compliance. She also advises issuers in connection with the securities law aspects of employee benefit plans and dividend reinvestment plans.

Other transactional matters in which Laura represents corporate clients include acquisitions and dispositions of assets or stock, restructurings (such as holding company formation) and going-private transactions. She also advises investors in leveraged buyout transactions, and represents financial institutions that take equity positions in companies. Laura advises clients on shareholder rights plans and anti-takeover protection provisions.

In addition to her governance and transactional practice, Laura counsels clients on day-to-day corporate questions. She drafts and reviews contracts and other corporate documentation, prepares terms and conditions of sale, provides guidance on limited liability company and other limited liability entity issues, and assists clients with various regulatory issues.

Gonzalo Go, Associate, Mayer Brown LLP

Gonzalo D.V. Go III is an associate in Mayer Brown's Corporate & Securities practice. G represents companies, investment banks and sponsors in public and private offerings of equity and debt securities, including initial public offerings, business combinations with special purpose acquisition companies (SPACs), shelf registration statements, follow-on offerings, medium-term note programs, issuances exempt from registration, investment-grade debt offerings and securitizations. He advises public companies on stock exchange listing applications, maintenance and transfers; securities law reporting and regulatory compliance requirements; and general corporate governance matters.

The International Financial Law Review (IFLR) Americas named G as Rising Star for 2023. The "VAALCO - TransGlobe merger" he assisted in was shortlisted by IFLR Americas as 2023 M&A Deal of the Year. The 2023 IFLR1000 guide ranked G as "Rising Star" in the United States and New York for "Capital Markets: Debt" and "Capital Markets: Equity."

G earned his LLM from Columbia Law School, where he served as a student senator and graduated as the class speaker, a Harlan Fiske Stone scholar and a recipient of the Parker School Recognition of Achievement in International and Comparative Law. He earned his JD, with honors, from the Ateneo Law School and his BS in Accountancy, with honors, from De La Salle University.

G's prior professional experiences include being (i) a capital markets associate in another global law firm in New York, (ii) an associate general counsel of Jollibee Foods Corporation, a multinational fast-food chain headquartered in the Philippines, where he gained extensive experience in managing legal risks in various business activities, such as business development and expansion, customer relations, operations, real estate, franchising, marketing, human resources, purchasing, finance, corporate communications, tax and government relations, (iii) a faculty member of the Ateneo Law School and (iv) a tax associate at SyCip Salazar Hernandez & Gatmaitan, a top tier law firm in the Philippines. G is also a lawyer and a certified public accountant in the Philippines.

In the American Bar Association's (ABA) Business Law Section, G serves as chair of the 2SLGBTQIA+ Subcommittee of the Diversity & Inclusion Committee (2022-present), vice chair of the Annual Review of Federal Securities Regulation Subcommittee of the Federal Regulation of Securities Committee (2022-present) and a Business Law Fellow (2022-2024). He has participated in the drafting committee for the ABA's comment letter on the SEC's proposed rules on SPACs. G was named a 2023 ABA On the Rise - Top 40 Young Lawyer.

G is a member of the firm's New York Pro Bono Committee.

Kevin F. Winnie, Associate, Mayer Brown LLP

Kevin F. Winnie is an associate in Mayer Brown's Corporate & Securities practice. Kevin represents companies and sponsors in public and private offerings of equity and debt securities, including business combinations with special purpose acquisition companies (SPACs), shelf registration statements, follow-on offerings, and issuances exempt from registration and investment-grade debt offerings. He advises public companies on stock exchange listing applications, maintenance and transfers; securities law reporting and regulatory compliance requirements; and general corporate governance matters.

Kevin earned his JD from Fordham University School of Law, where he served as the Managing Editor of the Fordham Urban Law Journal. He earned his BA, with honors, from Wesleyan University.

This document from Practical Guidance[®], a comprehensive resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis[®]. Practical Guidance includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practical-guidance](https://www.lexisnexis.com/practical-guidance). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.