Preparing Your 2012 Form 20-F

January 18, 2013

This memorandum highlights some considerations for the preparation of your 2012 annual report on Form 20-F. As in previous years, we discuss new disclosure obligations and areas of focus for the U.S. Securities and Exchange Commission (**SEC**). In addition, we highlight certain U.S.-related regulatory actions and other developments that may be of interest to foreign private issuers (**FPIs**).

New Disclosure Obligations for 2012 Form 20-F

Iran Threat Reduction and Syria Human Rights Act of 2012

The Iran Threat Reduction and Syria Human Rights Act of 2012 (**ITRA**), which became law in August 2012, among other things, expands existing U.S. economic sanctions aimed at third-country nationals engaging in business with Iran, and includes measures relating to human rights abuses in Iran and Syria. It exposes non-U.S. persons to possible sanctions if they engage in newly targeted activities relating to Iran.

Among its many provisions, the ITRA adds new reporting obligations for companies which are required to file periodic reports with the SEC. For FPIs, the obligations relate to annual reports on Form 20-F, due to be filed on or after February 6, 2013.

A company must disclose if, during the relevant reporting period, it or any of its affiliates (as defined in Rule 12b-2 under the U.S. Securities Exchange Act of 1934 (**Exchange Act**)) knowingly engaged in certain Iran-related activities or transactions with persons designated for terrorism or weapons of mass destruction proliferation reasons, including, among others, the National Iranian Oil Company (**NIOC**), certain Iranian banks and other entities and persons (including certain entities and persons unrelated to Iran). Disclosable activities include, but are not limited to, certain investments and transactions relating to the Iranian petroleum and petrochemical sectors, and transactions involving the Government of Iran (defined to include its political subdivisions and agencies, entities owned or controlled by them, and persons acting directly or indirectly on behalf of them). A company must disclose the nature and extent of the relevant activity; the gross revenues and net profits attributable to the activity; and whether the activity will be continued. If an FPI reports that it or an affiliate has knowingly engaged in any of the specified activities, the FPI is required to file separately with the SEC a **notice** that the disclosure of that activity has been included in the company's annual report on Form 20-F. In order to meet its new reporting obligations, an FPI will need to gather the relevant information from its affiliates.

Upon receipt of such a notice, the SEC is required to transmit the report to the President of the United States and certain congressional committees, and to post the information provided in the disclosure and the notice on the SEC's website. Upon receiving a report that includes disclosure of a specified activity (except a transaction or dealing with the Government of Iran), the President must initiate an investigation into the possible imposition of sanctions under certain laws and Executive Orders and must determine, within 180 days of initiating an investigation, whether sanctions should be imposed on the company or its affiliate.

For more information on these new reporting requirements, see our memoranda: ***New Law Requires Issuers to Disclose Certain Iran-Related Transactions*** and ***SEC Issues Guidance on New Iran Disclosure Requirements***.

The United States has implemented other laws in addition to the ITRA targeting Iran, and the SEC and an increasing number of U.S. states, municipalities and universities have continued to focus on contacts that companies have with Iran and other countries that are targets of sanctions and/or identified as State Sponsors of Terrorism. See "SEC Disclosure Focus Areas—U.S. Economic Sanctions & State Sponsors of Terrorism" for more information on these developments which may warrant consideration for Form 20-F disclosure.

Mine Health and Safety Disclosure

In our ***Preparing Your 2011 Form 20-F*** memorandum, we discussed the SEC's **final rule** relating to Section 1503 of the Dodd-Frank Act which applies to any FPI that is an operator, or that has a subsidiary that is an operator, of a coal or other mine subject to the U.S. Federal Mine Safety Act of 1977 (generally mines located in the United States and its territories). The final rule, adopted effective January 27, 2012, created a new Item 16H in Form 20-F, which largely reflects the disclosure requirements under Section 1503 that were already in effect. While Section 1503 and Item 16H are inapplicable as to foreign mine health and safety issues, the SEC noted in its final rule that disclosure of such issues may be required otherwise to the extent that they are material.

NYSE and Nasdaq Listing Standards for Compensation Committees

On June 21, 2012, the SEC adopted **final rules** to adopt listing standards to implement the Dodd-Frank Act's requirements regarding the independence of compensation committees and their advisers (see our memorandum: ***SEC Finalizes Independence Rules for Compensation Committees and Advisers***). The New York Stock Exchange (**NYSE**) and Nasdaq subsequently proposed listing standards to apply the SEC's rules and, on January 11, 2013, the SEC approved the NYSE and Nasdaq listing standard proposals on an accelerated basis (see our memorandum: ***NYSE and Nasdaq Propose Listing Standards on Compensation Committees and Advisers*** as well as the SEC's **NYSE approval** and **Nasdaq approval** for more information). FPIs that follow their home country practice are exempt from the compensation committee independence and compensation adviser requirements, but may be required to make certain disclosures discussed below, as applicable, in their Form 20-F filed on or after July 1, 2013, the effective date of the new NYSE and Nasdaq listing standards.

Existing Section 303A.11 of the NYSE listing standards requires NYSE-listed FPIs to disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under NYSE listing standards. As a result, NYSE-listed FPIs may be required to include further disclosure once the NYSE listing standards apply to domestic issuers to the extent the standards differ from the FPI's home country practice. In addition, under the Nasdaq listing standards, Nasdaq-listed FPIs that follow their home country practice and do not have an independent compensation committee will be required to disclose the reasons why they do not have such a committee in their Form 20-F.

SEC Disclosure Focus Areas

As in previous years, companies should keep the following SEC focus areas in mind when preparing their 2012 Form 20-F:

Management's Discussion & Analysis

The SEC continues to focus on Management's Discussion and Analysis (**MD&A** or **OFR**) disclosure, and FPIs should re-familiarize themselves with our previous advice as to key focus areas, including disclosure regarding liquidity and capital resources, material known trends and uncertainties and short-term borrowings (see our memoranda: ***Preparing Your 2010 Form 20-F*** and ***SEC Shines a Spotlight on Short-Term Borrowings: Issues Guidance and Proposes New Disclosure Requirements***).

In particular, the SEC remains focused on the identification and disclosure by companies of material known trends and uncertainties well before any adverse impact is realized. Recent comments from the SEC Staff have highlighted the continuing importance of the "two-pronged" test at the core of MD&A

disclosure in this area, which requires that companies: (i) identify known trends and uncertainties based on information collected, and (ii) evaluate whether these identified trends and uncertainties will have, or are reasonably likely to have, a material impact on liquidity, capital resources or results of operations. Companies must first determine whether the known trend, demand, commitment, event or uncertainty is likely to come to fruition and, if management determines that the contingency is not reasonably likely to occur, no disclosure would be required. If management cannot make that determination, companies should evaluate objectively the consequences of the known trend, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure would be expected, unless management decides that a material effect on the company's financial condition or results of operation is not reasonably likely to occur.

Non-GAAP Financial Measures

In our ***Preparing Your 2011 Form 20-F*** memorandum, we noted that the SEC was reviewing the use and disclosure of non-GAAP financial measures in SEC filings, company press releases and other public disclosures and, in particular, the SEC's interest in ensuring that disclosure is balanced so that investors understand what the non-GAAP financial measures mean. The SEC Staff has observed an increase in the use of such measures, particularly in the tech industry. In compliance with applicable rules, companies that include non-GAAP financial measures in filings with the SEC are expected to present, with equal or greater prominence, the most directly comparable GAAP financial measure; to prepare a reconciliation of the differences between the non-GAAP financial measure with the most directly comparable GAAP financial measure; and to include a statement disclosing the reasons why the company's management believes that presentation of the non-GAAP financial measure provides useful information to investors.

The SEC Staff continues to encourage companies to provide consistent disclosure of information, including non-GAAP financial measures, in their SEC filings when such non-GAAP measures are otherwise being publicly disseminated through earnings calls and earnings releases and presentations as well as other means.

Loss Contingencies

The accounting and disclosure of loss contingencies continues to be an area of focus for the SEC in filing reviews (see ***Preparing Your 2011 Form 20-F***). Although the SEC staff has seen an improvement by companies in terms of both the timeliness and robustness of their loss contingency disclosures, the SEC Staff has reiterated that companies should ensure that they foreshadow risks relating to material losses, such as material settlements or litigation judgments, such that the actual occurrence of material losses do not come as a surprise when they are incurred. The SEC Staff has commented on filings by companies that reveal an accrual in the financial statement footnotes without any advance warning at the "reasonably possible" stage in the MD&A and/or financial statements' loss contingencies footnote. The SEC Staff may look for inconsistencies between the MD&A, litigation, risk factors and financial statement footnotes (as well as with less formal communications that are not filed with the SEC). If management cannot reasonably estimate the amount of loss or a range of losses for a material loss contingency deemed "reasonably possible", a qualitative explanation of the relevant facts and circumstances may be required.

Segment Reporting

The SEC remains focused on the identification of operating segments and has indicated that it may comment on a registrant's segment reporting where there are inconsistencies between the segment footnote and the company's description of its business or where changing economic conditions suggest changes in segment reporting or aggregation. The SEC Staff has indicated that they may ask to see reports that go to the "chief decision maker" to determine how the company views its segments internally.

U.S. Economic Sanctions & State Sponsors of Terrorism

In addition to the ITRA discussed above, new Iran-related sanctions have been implemented pursuant to the National Defense Authorization Act for Fiscal Year 2012, the National Defense Authorization Act for Fiscal Year 2013, and several Executive Orders. These actions target, among other things, the Government of Iran, including entities it owns or controls, such as NIOC; individuals and entities engaged in the energy, shipping or shipbuilding sectors of Iran; and non-Iranian persons, including non-U.S. financial institutions and other companies, that knowingly provide support, goods or services to, or knowingly engage in significant transactions for, certain Iran-related activities, including the purchase of petroleum or petrochemical products from Iran and human rights abuses in Iran.

The SEC's Office of Global Security Risk (**OGSR**) continues to monitor public company disclosure regarding business activities in or with State Sponsors of Terrorism (i.e., Cuba, Iran, Sudan and Syria), even where any activities with such states may appear financially immaterial. The SEC's position is that "qualitative" materiality must also be considered, for example, where a company's dealings may have an adverse impact due to negative public perception. In particular, companies that conduct business activities in or with the State Sponsors of Terrorism should be aware that if the OGSR discovers such business, it may raise queries which will need to be answered publicly and may also request modifications to the company's Form 20-F disclosure. The OGSR frequently questions FPIs about news reports or information on a company's website indicating that the company has business dealings with one of the State Sponsors of Terrorism.

Further, an increasing number of U.S. states, municipalities and universities have adopted or are considering divestment or similar initiatives that target companies engaged in certain activities involving a State Sponsor of Terrorism, in particular, Iran and Sudan. Many of these laws or policies are specifically directed at companies conducting oil, mineral and natural resource-related activities or activities related to the defense or nuclear industries in the targeted countries.

In light of the above, FPIs should consider relevant risk factor disclosure as well as other disclosure denoting the nature and materiality of contacts with sanctioned countries or those identified as State Sponsors of Terrorism.

Denial of PCAOB Inspection

If a company's principal audit firm is located in a foreign jurisdiction that does not allow the Public Company Accounting Oversight Board (**PCAOB**) to inspect its accounting firm's audits and quality control (which includes jurisdictions throughout Europe and Asia), the SEC Staff has issued comments requesting registrants to confirm that they will disclose this fact under a separate risk factor heading. The SEC Staff has indicated that companies may provide factual disclosures in such risk factors including that PCAOB does not have access to inspect any auditors in the country or jurisdiction to clarify that the situation is not unique to a particular registrant. The SEC Staff may issue further comments for companies to include this type of risk factor disclosure in future filings.

Cybersecurity

In our ***Preparing Your 2011 Form 20-F*** memorandum, we discussed the SEC's **disclosure guidance** on cybersecurity risks. The SEC Staff has said that it recently conducted a review of the cybersecurity disclosure of a number of the largest SEC filers, which led to comments being issued to a large percentage of those reviewed. In public statements, the SEC Staff has requested that companies provide more than generic risk factor disclosure as to the potential for future attack. Companies should consider identifying material cyberattacks which have occurred or specific threats to its security in the future. The SEC Staff has noted that a company may have difficulty in assessing whether an attack has been or may be material but has underscored that companies should make this assessment in considering their disclosure. The SEC Staff has stated, however, that it does not expect a company to provide a roadmap of its informational technology vulnerabilities.

European Economic and Sovereign Debt Crisis

In our ***Preparing Your 2011 Form 20-F*** memorandum, we discussed the SEC's **disclosure guidance** to financial institutions on European sovereign debt exposures. In recent public statements, the SEC Staff has noted an improvement in reporting by financial institutions of their direct and indirect exposure to European sovereign debt holdings, but expects companies in other industries with European sovereign debt exposures to consider the SEC's guidance to financial institutions in this area when considering their own disclosures.

Financial Institutions

The following are disclosure focus areas of interest primarily to FPIs that are financial institutions:

- *Smaller Financial Institutions.* The SEC Staff has issued **disclosure guidance** based on its observations of the disclosures of smaller financial institutions. The topics discussed in the guidance include topics such as allowance for loan losses, charge-off and nonaccrual policies, commercial real estate, loans measured for impairment based on collateral value, credit risk concentrations, troubled debt restructurings and modifications and deferred taxes. Although directed at smaller financial institutions, the guidance provides insight into the SEC Staff's view on the above topics generally and may therefore be useful to larger financial institutions in the preparation of their disclosures.
- *European Sovereign Debt Exposures*. In our ***Preparing Your 2011 Form 20-F*** memorandum, we discussed the SEC's **disclosure guidance** addressing the SEC Staff's concerns about financial institutions' disclosures related to their direct and indirect exposure to European sovereign debt holdings. The SEC Staff has recognized improvement in reporting, but has stated that further improvements could be made by financial institutions to disclosure about the nature and extent to which credit default swaps are used to mitigate risks. In addition, in recent comment letters, the SEC Staff has requested that financial institutions disaggregate their risk exposure by country in line with the SEC's previous guidance.
- *Basel III and Other Non-GAAP Metrics.* The SEC Staff has noted that Basel and regulatory capital ratios are not mandated disclosures under the current regulatory regime as they are not disclosures required by a government, governmental authority or self-regulatory organization and are therefore non-GAAP financial measures. As such, the SEC Staff has indicated that they expect financial institutions to provide clarifying disclosures regarding the use of such ratios, including any significant judgments that went into the calculation of the ratios and a statement that such ratios may not be comparable to similar calculations prepared by other financial institutions.
- *Ongoing Monitoring*. The SEC has recently created a special review branch within its Operations group that is dedicated to the monitoring of large financial institutions, with the intention of providing nearly continuous review of financial institutions' disclosure filings.

Accounting and Financial Reporting

Revised Financial Reporting Manual

The SEC's Division of Corporation Finance issued an updated **Financial Reporting Manual** on October 4, 2012. Among other changes, the revised manual includes changes to Topic 6 applicable to FPIs, in particular, with respect to interim financial statements and other changes to reflect the FPI reporting enhancements adopted a few years ago that are now fully in effect. The manual has not been updated for the JOBS Act (discussed below) and it directs users to refer to the JOBS Act statutory language in conjunction with the manual until further updates are made.

Continued XBRL Relief for IFRS Filers

In our ***Preparing Your 2011 Form 20-F*** memorandum, we discussed the SEC's **no-action letter** confirming that FPIs that prepare financial statements in accordance with International Financial Reporting Standards (**IFRS**) as issued by the International Accounting Standards Board (**IASB**) will not be required to provide financial information in an interactive data format using XBRL until the SEC specifies the XBRL taxonomy for IFRS financial statements (see our memorandum: ***SEC Confirms IFRS Filers Will Not Be Required to Provide Interactive Data Until SEC Specifies Taxonomy***). The SEC has yet to approve a XBRL taxonomy for IFRS financial statements and has given no indication of when such a taxonomy will be approved. Consistent with prior years, FPIs that prepare IFRS financial statements should not check the box on the cover page of Form 20-F relating to compliance with the interactive data file submission requirements.

Proposed Liquidity Risk and Interest Rate Risk Disclosure for U.S. GAAP Filers

The Financial Accounting Standards Board has proposed new liquidity and interest rate risk **disclosure requirements** which would be applicable to companies that prepare their financial statements in accordance with U.S. GAAP. The proposed financial statement disclosures would vary depending upon whether or not the disclosing entity is a financial institution. Among other changes, the proposed disclosure requirements would require all reporting organizations to provide additional quantitative or narrative disclosure of the organization's exposure to liquidity risk, including discussion about significant changes in the amounts and timing in quantitative tables and how the reporting organization managed those changes during the relevant period. Financial institutions would be required to provide quantitative or narrative disclosures of the organization's exposure to interest rate risk, including discussion about significant changes in the amounts and timing in the quantitative tables and how the reporting organization managed those changes during the current period. The comment period closed on September 25, 2012.

Incorporation of IFRS into U.S. Financial Reporting

The SEC is continuing its investigation into the incorporation of IFRS as issued by the IASB into the U.S. financial reporting system for U.S. issuers. The SEC Staff's **work plan** outlines the positive and negative aspects of IFRS and the IASB as expressed by international users and interested parties in the United States. The work plan does not, however, answer the question of whether or how the SEC may ultimately incorporate IFRS into financial reporting standards for U.S. issuers. FPIs that prepare financial statements in accordance with U.S. GAAP should continue to monitor developments in this area.

Form 20-F Item 17 and Audit Opinions

The Center for Audit Quality's (**CAQ**) International Practices Task Force has recently discussed Item 17(c) of Form 20-F, which requires that financial statements that comply with IFRS as issued by the IASB include in the audit report an opinion as to whether the financial statements comply with IFRS as issued by the IASB. The CAQ has warned companies that if the notes to the financial statements and the auditor's report do not contain the required pledge that the financial statements comply with IFRS as issued by the IASB, the company will be required to submit a GAAP reconciliation. As such, audit firms should review the form of the audit report to be filed with the SEC and should advise their clients regarding compliance with their filing responsibilities.

Other Matters Relevant to FPIs

JOBS Act

On April 5, 2012, President Obama signed into law the JOBS Act, which eases the SEC-registered IPO process for "emerging growth companies" (**EGCs**) and will alter the private offering process under Rule

144A and Regulation D of the U.S. Securities Act of 1933 (**Securities Act**). The JOBS Act contains a number of key changes that will facilitate U.S. IPOs by FPIs that are EGCs in the SEC-registered deal context and offerings by FPIs generally in the non-SEC-registered deal context. Such benefits should add to the attractiveness of the U.S. capital markets. For more information, see our memorandum: ***The JOBS Act: Potential Benefits for Foreign Private Issuers***.

Pursuant to the JOBS Act, the SEC issued on August 29, 2012 a **rule proposal** which would eliminate the prohibition against "general solicitation" and "general advertising" in private offerings made in reliance on Rule 506 of Regulation D or Rule 144A of the Securities Act (see our memorandum: ***SEC Issues Proposal to Eliminate General Solicitation Ban as Mandated by the JOBS Act***). Unlike other portions of the JOBS Act, the proposal would apply to all issuers, not just EGCs. The SEC has yet to issue final rules and has given no indication as to when final rules are to be expected.

Rules Implementing Dodd-Frank Disclosure Requirements

The SEC continues the rule making process mandated under the Dodd-Frank Act and in 2012 adopted rules relating to conflict minerals and government payments by resource extraction issuers, respectively. The obligations imposed on companies under both final rules require certain disclosures to be made in, and filed with, the SEC on a new form, Form SD, by May 31 for the prior calendar year, beginning May 31, 2014. Form SD will be "filed" with the SEC rather than "furnished". Accordingly, any materially "false or misleading statement" in the form will be subject to liability under Section 18 of the Exchange Act; however, because the form is separate from a company's Form 20-F, it will not be covered by the CEO and CFO certifications or automatically incorporated into a company's shelf registration statement.

Conflict Minerals. On August 22, 2012, the SEC adopted rules implementing the Dodd-Frank Act's reporting requirements relating to "conflict minerals" – cassiterite, columbite-tantalite, gold, wolframite and other minerals determined by the U.S. government to be financing conflict in the Democratic Republic of Congo or adjoining countries. For more information, see our client newsflash: ***SEC Adopts Final Conflict Minerals Rules with Notable Changes***; and client memorandum: ***Implementing the SEC's Final Conflict Mineral Rules: Guidelines and Commonly Asked Questions***. Under the rules, all reporting companies, including FPIs, are required to make conflict minerals disclosures and conduct supply chain due diligence if they "manufacture or contract to manufacture" products that contain conflict minerals that are "necessary to the production or functionality of the product." The SEC has not explicitly defined what it means to "manufacture" a product and has imposed reporting requirements on companies that "contract to manufacture" products, or those that have some actual influence over the manufacturing of a product, which is expected to include a significant number of companies that are not strictly manufacturers of such products. Under the new rules, SEC registrants must make a significant threshold determination: does the company manufacture or contract to manufacture products for which conflict minerals are necessary to the functionality or production? Companies that answer yes to this question will be subject to the conflict mineral disclosure requirements and must begin scrutinizing the origin of conflict minerals in their products as of January 1, 2013. The conflict minerals disclosures are required to be filed on Form SD by May 31 for the prior calendar year, beginning May 31, 2014, for 2013.

Resource Extraction Issuers and Government Payments. On August 22, 2012, the SEC also adopted rules implementing the Dodd-Frank Act's reporting requirements relating to resource extraction issuers. For more information, see our client newsflash: ***SEC Adopts Final Rules Implementing Dodd-Frank Disclosure Requirements for Resource Extraction Issuers***. Under the rules, an FPI that (1) files annual reports with the SEC and (2) engages in the commercial development of oil, natural gas or other minerals, is required to disclose the type and total amount of payments made by the company, its subsidiaries or entities under its control to a foreign government or the U.S. federal government for each "project" and each government in order to further the commercial development of oil, natural gas or minerals. Companies subject to the rule will be required to report such payments for fiscal years ending after September 30, 2013 on Form SD. For the first report, most companies will be able to provide a report disclosing only those payments made after September 30, 2013. Calendar year companies will file their first report for the period from October 1 to December 31, 2013, by May 30, 2014.

FCPA Guidance

The U.S. Department of Justice (**DOJ**) and the SEC have released **new guidance** on the criminal and civil enforcement provisions of the Foreign Corrupt Practices Act (**FCPA**). For more information, see our client memorandum: ***DOJ and SEC Issue FCPA Guidance***.

The new guidance consolidates and recites existing case law and resolutions and provides new examples of cases in which the DOJ or SEC previously issued declinations. While the Guide may be helpful to many, it does not provide new substantive interpretations. Among other topics, the Guide reiterates prior guidance about the factors that the DOJ and SEC consider in determining whether to bring an enforcement action, namely those enumerated in the SEC's *Enforcement Manual* and the DOJ's *Principles of Federal Prosecution of Business Organizations* and emphasizes self-reporting, cooperation and remedial efforts. The Guide notes the importance of self-reporting of misconduct when it is discovered, including conducting a thorough review of the nature, and consequences of the misconduct, and prompt and effective disclosure of the misconduct to the public, regulatory agencies, and self-regulatory organizations, such as stock exchanges.

Publication of SEC Comment Letters

The SEC Staff has indicated a growing concern about what companies write in their comment response letters and has urged companies and their advisors to exercise care when drafting such responses. Comment letter responses are a part of a company's public disclosure record and are increasingly receiving public scrutiny and companies must therefore not make materially inaccurate statements in such responses.

Disclosure Monitoring

In recent years, the SEC Staff has increasingly looked at informal corporate communications that are often not filed or furnished to the SEC, such as company press releases and statements made by officials during company or third-party sponsored investor conferences or are disclosed in analyst reports, news articles, blogs and through social media, such as Facebook and Twitter. For example, in connection with its initial public offering, Groupon filed an amended registration statement that included a statement requesting that investors not rely on certain public comments made by the CEO in an email to certain Groupon employees, which had been inadvertently released to the media. On December 6, 2012, Netflix disclosed that it had received a "Wells Notice" regarding an alleged violation of the SEC's rules regarding selective disclosure of material information as a result of a statement made on the Facebook page of Netflix's CEO, which was not otherwise publicly disclosed. The SEC Staff has provided no definitive or formal guidance on the use of social media for public disclosure requirements and the outcome of the Netflix case will therefore be instructive.

FINRA Review Process

The Financial Industry Regulatory Authority (**FINRA**) has recently revised its review procedures for shelf takedowns that are subject to the FINRA corporate financing rules. Under the new review procedure, takedowns can occur prior to FINRA's review and sign-off of an issuer's shelf registration statement; however, the underwriters must represent to FINRA that (i) the underwriting terms and arrangements of the offering are not unreasonable within the meaning of the corporate financing rule, (ii) all underwriting compensation will be disclosed in the underwriting section of the prospectus supplement, (iii) unregistered securities acquired by members, their affiliates or associated persons during a specified period will be locked up and disclosed as compensation in the prospectus supplement and (iv) in the event the offering is subject to FINRA's conflict of interest rule, there will be full compliance with the rule. Under the new procedures, FINRA will issue a “same day clearance” letter, but the underwriters will be required to file the prospectus supplement with FINRA for its review on the day it is filed with the SEC. As it may be difficult to obtain information needed to respond to FINRA comments after an offering has closed, all FINRA diligence should be completed before the shelf takedown.

NYSE Affirmations

FPIs that are listed on the NYSE are reminded of the need to submit NYSE interim written affirmations promptly (within five business days) after the occurrence of a triggering event, which includes, among other events, the appointment and departure of directors and changes in the membership of board committees. In addition, FPIs are reminded that the NYSE annual written affirmation and chief executive certification is required within 30 days after the annual meeting.

Filing Fee Increased

As of October 1, 2012, the **filing fee** to register securities with the SEC increased to $136.40 per million dollars (from $114.60 per million dollars).

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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