Davis Polk

Preparing your 2022 Form 20-F

November 30, 2022 | Client Update | 23-minute read

This client update highlights some considerations for the preparation of your 2022 annual report on Form 20-F. As in previous years, we discuss both disclosure developments and continued areas of focus for the U.S. Securities and Exchange Commission (SEC). In addition, we highlight certain U.S.-related enforcement matters and other developments of interest to foreign private issuers (FPIs).

Overview

Disclosure developments and SEC focus areas relevant to your 2022 Form 20-F
Recent disclosure developments that do not yet apply but may be relevant to your future Form 20-Fs
Enforcement matters
Other matters that may be of interest to FPIs
Recent developments relevant to U.S. public securities offerings

Disclosure developments and SEC focus areas relevant to your 2022 Form 20-F

Recent disclosure developments

Nasdaq board diversity rules

Nasdaq's new board diversity rules, approved by the SEC on August 6, 2021, require Nasdaq-listed companies, including FPIs, to have diverse board members or explain why they do not. In addition, the rules require companies to disclose information regarding the diversity of their boards annually using a prescribed matrix.

Under the rules, FPIs must have at least *two* board members who are female or have (i) one female director and (ii) one director who is LGBTQ+ or an "underrepresented individual" in their home country jurisdiction *or* explain why they do not have the requisite number of "diverse" board directors. Companies with five of fewer board members must have at least one member who is diverse. Subject to the phase-in of the rules discussed below, disclosure of noncompliance must be disclosed in the 20-F or on the FPI's website (provided that, if disclosed on the website, the FPI must post the disclosure concurrently with its 20-F and submit a URL link through the Nasdaq Listing Center within one business day).

In addition to the disclosure regarding diversity objectives, the new rules will require FPIs (including those that do not have the requisite number of diverse directors) to publicly disclose information on the directors' voluntary self-identified gender, racial characteristics and LBGTQ+ status in a prescribed matrix.

Compliance under the new rules is subject to phase-in based on the Nasdaq listing tiers:

Copyright 2022 Davis Polk & Wardwell LLP

- **2022 20-F:** FPIs listed on the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market, and FPIs with a board of five or fewer members, must disclose statistical information in matrix format and comply or explain why they do not have at least *one* diverse director;
- **2024 20-F:** FPIs listed on the Nasdaq Global Select Market or the Nasdaq Global Market must explain why they do not have at least *two* diverse directors; and
- **2025 20-F:** FPIs listed on the Nasdaq Capital Market must explain why they do not have at least *two* diverse directors.

For further information, please see our client update.

Mining property disclosure rules

As discussed in our Preparing Your 2021 Form 20-F client update, the mining property disclosure rules adopted by the SEC in October 2018 and codified in Subpart 1300 of Regulation S-K applied for the first time to FPI mining registrants in connection with the 2021 Form 20-F.

Amongst others, the mining property disclosure rules require:

- that companies disclose both mineral resources and material exploration results in addition to mineral "reserves"; and
- the filing of technical report summaries prepared by a qualified person for properties that are individually material, which identify and summarize the information reviewed and conclusions reached by each qualified person about the company's mineral resources or mineral reserves determined to be on each material property.

Mining registrants that filed a technical report summary in connection with the 2021 Form 20-F are not required to refile such technical report summary, unless there is a material change in previously disclosed estimates or results. Mining registrants are, however, required to provide updated disclosure with respect to mineral resources, material exploration results and mineral reserves.

Please also see our client update for further information.

SEC disclosure focus areas

Macroeconomic environment

At the PLI's annual "SEC Speaks" 2022 conference, members of the Division of Corporation Finance stated that the SEC will focus on ensuring registrants make adequate disclosures in areas of emerging risk in the upcoming fiscal year, including risks associated with the Russia/Ukraine war, supply chain issues and inflation. Registrants should consider the need for disclosures regarding the Russia/Ukraine war even if registrants do not conduct business in those countries. In addition, this conflict could exacerbate supply chain disruption, which was borne out of the pandemic and contributed to inflationary pressures, leading to higher interest rates and financing issues. Registrants should carefully consider the constraints that these developments have on their business and avoid boilerplate communications and disclosures.

Russia/Ukraine conflict

On May 3, 2022, the SEC Division of Corporation Finance published a sample comment letter, stating that companies may have disclosure obligations under the federal securities laws related to the direct or indirect impact that Russia's invasion of Ukraine and the international response thereto have had or may have on their business. The Division of

Copyright 2022 Davis Polk & Wardwell LLP

Corporation Finance believes that companies should provide detailed disclosure, to the extent material or otherwise required, regarding: (a) direct or indirect exposure to Russia, Belarus, or Ukraine through their operations, employee base, investments and securities trading; (b) direct or indirect exposure to sanctions against Russian or Belarusian individuals or entities, or legal or regulatory uncertainty associated with operating in, or exiting, Russia or Belarus; (c) direct or indirect reliance on goods or services sourced in Russia or Ukraine or, in some cases, in countries supportive of Russia; (d) actual or potential disruptions in the company's supply chain; or (e) business relationships, connections to, or assets in, Russia, Belarus, or Ukraine.

In addition, since Russia's invasion of Ukraine, many companies have experienced heightened cybersecurity risks, increased or ongoing supply chain challenges and volatility related to the trading prices of commodities regardless of whether they have operations in Russia, Belarus, or Ukraine, that warrant disclosure.

Inflation and supply chain issues

Inflation and supply chain issues are affecting an increasingly large number of companies in different industries. Although the effects of inflation and supply chain disruption vary by company, there are some common topics that FPIs should evaluate when preparing the Form 20-F. Current economic conditions might require additional disclosure beyond what has historically been provided in a more steady-state economic environment. Companies should update any language in their filings that refers to inflation being possible or "on the horizon" to reflect that the company is currently experiencing inflation. Moreover, at a recent conference, members of the SEC's Division of Corporation Finance's Office of Chief Accountant stated that the SEC expects to see more information in public filings on:

- how these trends have affected results of operations, sales, profits, capital expenditures and maintenance;
- how inflation affects business goals and pricing strategies (e.g., is the company able to pass along increased costs to customers or forced to absorb those costs); and
- the specific factors behind rising costs and supply chain disruption and what a company is doing to mitigate the impact.

COVID-19

As discussed in our Preparing Your 2021 Form 20-F client update, the Staff of the SEC's Division of Corporation Finance issued Disclosure Guidance Topics No. 9 and 9A in March and June 2020, respectively, providing the SEC's views regarding disclosure that companies should consider with respect to COVID-19 and related business and market disruptions. Please see our client update covering Disclosure Guidance Topic No. 9 and our client update covering Disclosure Guidance Topic No. 9A.

Climate

As discussed in our Preparing Your 2021 Form 20-F client update, on September 22, 2021, the Division of Corporation Finance published a sample comment letter that it may issue to companies regarding their climate-related disclosure or the absence thereof. Among others, the SEC reiterated that a number of its disclosure rules may require disclosure related to climate change-related risks and opportunities in a company's description of business, legal proceedings, risk factors and management's discussion and analysis of financial condition and results of operations.

On March 21, 2022, the SEC also proposed a sweeping climate disclosure regime for public companies, requiring disclosure of climate-related risks, greenhouse gas emissions and climate-related financial metrics not previously required by the SEC. See "*Recent disclosure developments that do not yet apply but may be relevant to your future Form 20-Fs—Proposed climate disclosure rules*" below for further details.

Cybersecurity

Copyright 2022 Davis Polk & Wardwell LLP

In our Preparing Your 2021 Form 20-F client update, we discussed the SEC's existing guidance and emphasis on the importance of cybersecurity disclosure.

The SEC has since stepped up cybersecurity disclosure enforcement and noted that it would heighten enforcement risk in this respect, including: (i) for failure to provide timely or adequate notice of a material cybersecurity incident in Form 6-K or in subsequent filings; (ii) for failure to adequately disclose, or for overstating, the nature of the company's policies and procedures, management and governance of cybersecurity risks; and (iii) increasing the likelihood of an SEC finding that the company lacks adequate cybersecurity controls because it does not maintain some of the policies and procedures described in the proposal.

On March 9, 2022, the SEC also proposed new cybersecurity disclosure rules for public companies that would require disclosures regarding cybersecurity risk management and material cybersecurity incidents in periodic filings. See "*Recent disclosure developments that do not yet apply but may be relevant to your future Form 20-Fs—Proposed cybersecurity disclosure rules*" below for further details.

Sanctions

In past years, the SEC has sent numerous comment letters to public companies seeking more detail about disclosures related to dealings in countries that are the subject of U.S. sanctions enforced by the Treasury Department's Office of Foreign Assets Control (OFAC). OFAC continues to administer and enforce comprehensive sanctions with respect to Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine and the government of Venezuela, as well as against targeted individuals and entities involved in narcotics trafficking, terrorism and terrorist financing, transnational crime, proliferation of weapons of mass destruction, malicious cyber activities and election interference, or corruption and human rights abuses. In addition, targeted sanctions apply to individuals and entities in or related to former regimes in the Balkans, Iraq, Libya and Ukraine and current regimes in Afghanistan, Belarus, Burma, the Democratic Republic of the Congo, Eritrea and Ethiopia, Nicaragua, Russia, South Sudan, Venezuela and Zimbabwe, individuals and entities engaged in specific acts in or related to the Central African Republic, Darfur, Hong Kong, Lebanon, Mali, Somalia and Yemen, and targeted individuals and entities operating in certain sectors of the Russian economy, and to publicly traded securities of or linked to certain companies that have been identified as part of China's military-industrial complex.

In response to the Russian invasion of Ukraine in February 2022, the U.S. government imposed significant new sanctions against Russia, including territorial embargoes on the Donetsk People's Republic and Luhansk People's Republic regions of Ukraine, prohibitions on trade in certain goods and services between the United States and Russia and new investment in Russia by U.S. persons, asset blocking sanctions on a number of Russian individuals and entities, restrictions on transactions involving certain Russian financial institutions and Russia's Central Bank, National Wealth Fund and Ministry of Finance, and restrictions on dealing in Russian sovereign debt and debt or equity of certain Russian companies. Additional or expanded sanctions may be imposed in the future. FPIs should ensure they are compliant with U.S. law and, to the extent they are doing business in sanctioned countries or territories or with sanctioned persons (even if permissible without violating applicable U.S. law), should consider whether disclosure of such activities is appropriate.

Non-GAAP financial measures

In the past, including in our Preparing Your 2021 Form 20-F client update, we emphasized the SEC's focus on compliance with its non-GAAP financial measures guidance given in its C&DI guidance. The SEC continues to scrutinize non-GAAP financial measures and issue comment letters to FPIs that do not comply with the guidance.

Recent disclosure developments that do not yet apply but

Copyright 2022 Davis Polk & Wardwell LLP

may be relevant to your future Form 20-Fs

Resource extraction companies required to disclose payments to foreign governments

In our Preparing Your 2021 Form 20-F client update, we noted that in December 2020, the SEC adopted amendments that would require resource extraction companies to disclose payments made to foreign governments or to the U.S. federal government for the commercial development of oil, natural gas or minerals. By requiring disclosure at the national and major subnational political jurisdiction levels, rather than the contract level, this version of the final rules mandates less disclosure than the SEC's previous resource extraction disclosure rules. The rules became effective on March 16, 2021. The initial compliance date for an issuer with a December 31 fiscal year-end is September 30, 2024, which is 270 days after its fiscal year ending December 31, 2023. We have discussed the changes in detail in our client update.

Proposed climate disclosure rules

On March 21, 2022, the SEC proposed a sweeping climate disclosure regime for public companies, requiring disclosure of climate-related risks, greenhouse gas emissions and climate-related financial metrics not previously required by the SEC. The proposal, which would apply to both domestic companies and FPIs, aims to supersede, extend and regulate in prescriptive detail the largely voluntary disclosure practices that have grown organically over the last several years as many public companies have responded to demands from prominent institutional shareholders and climate advocates, and as part of companies' own efforts to showcase their commitment to sustainability. If adopted, the proposal would represent the most far-reaching public company disclosure and governance mandate to be introduced in decades.

Disclosures required by the proposal would be included in periodic reports, such as the 20-F and registration statements. Disclosures would be required both outside the financial statements and within financial statement footnotes, although GAAP accounting rules would not be directly impacted. The proposed disclosures include:

- **climate-related risks**, whether physical or transitional, reasonably likely to have a material impact over the short, medium and long term;
- **greenhouse gas (GHG) emissions metrics** (covering emissions categorized as Scope 1, Scope 2 and Scope 3) for the fiscal years included in the financial statements in the filing, including a description of the methodology, significant inputs and significant assumptions used to calculate GHG emissions;
- **targets and goals** relating to GHG reduction or any other climate-related target that a company has set, including data to indicate progress made toward achieving the target, to be updated annually;
- **climate-specific governance disclosure**, including the process by which the board exercises oversight and sets targets and goals, and the role of management in assessing and managing climate-related risks; and
- **financial statement footnote disclosure** of certain climate-related matters.

For further information, please see our client update.

The proposed new requirements are to be phased in over time, depending on filer status. The final climate disclosure rules were originally expected to be adopted in the fourth quarter of 2022. However, due to a technical error affecting the SEC comment process for the rule proposal earlier this year, the timing of any adoption is uncertain and the timeline for compliance set out in the rule proposal is therefore likely to shift.

Copyright 2022 Davis Polk & Wardwell LLP

Proposed cybersecurity disclosure rules

On March 9, 2022, the SEC proposed new cybersecurity disclosure rules for public companies that would require disclosures regarding cybersecurity risk management and material cybersecurity incidents in periodic filings.

The proposal would require additional cybersecurity risk management disclosures in Form 20-F, including with respect to:

- policies and procedures for cybersecurity risk assessment;
- management's cybersecurity expertise and its role in assessing and managing cybersecurity risk and implementing policies and procedures;
- board-level governance around cybersecurity risk; and
- the identification of any board member with cybersecurity expertise.

In addition, Form 6-K would be revised to emphasize that material cybersecurity incidents fall within the categories of information disclosable by FPIs when otherwise reported under local law. For further analysis, please see our client update.

Due to a technical error affecting the SEC comment process for the rule proposal earlier this year, the timing of any adoption is uncertain.

Share repurchase disclosures modernization

On December 15, 2021, the SEC proposed amendments to its rules regarding disclosure about an issuer's repurchases of its SEC-registered equity securities, often referred to as buybacks. The proposed amendments would require an issuer to provide a new Form SR before the end of the first business day following when the repurchase is made by or on behalf of the issuer or any affiliated purchaser. Form SR would require disclosure identifying the class of securities purchased, the total amount purchased, the average price paid, as well as the aggregate total amount purchased on the open market in reliance on the safe harbor in Rule 10b-18 under the Securities Exchange Act of 1934, as amended (Exchange Act), or pursuant to a plan that is intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c).

The proposed amendments also would enhance existing periodic disclosure requirements regarding these repurchases required to be provided in Form 20-F. Specifically, the proposed amendments would require an issuer to disclose:

- the objective or rationale for the share repurchases and the process or criteria used to determine the repurchase amounts;
- any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions; and
- whether the issuer is making its repurchases pursuant to a plan that it intends to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c) and/or the conditions of the Exchange Act Rule 10b-18 non-exclusive safe harbor.

Due to a technical error affecting the SEC comment process for the rule proposal earlier this year, the timing of any adoption is uncertain.

Human capital disclosures

Copyright 2022 Davis Polk & Wardwell LLP

In August 2020, the SEC amended Item 101 of Regulation S-K to require that companies describe—to the extent such disclosure would be material—their human capital resources, including human capital measures or objectives that the company focuses on in conducting business (such as, depending on the nature of the company's business and workforce, measures or objectives that address the development, attraction and retention of personnel).

SEC Chair Gary Gensler indicated at a recent conference that the level of human capital resources disclosure in public filings varies significantly and that he had instructed SEC Staff to focus on enhancing such disclosure. As a result, the SEC will most likely begin to scrutinize human capital resources disclosure more vigorously and, based on the SEC's Spring 2022 Regulatory Agenda, human capital resources disclosure rules continue to be expected (but have not yet been proposed).

Enforcement matters

In its fiscal year ending on September 30, 2022, the SEC's Division of Enforcement brought 760 total enforcement actions, representing a 9% increase over the prior year. These included 462 stand-alone enforcement actions, representing a 6.5% increase over fiscal year 2021. The SEC's stand-alone enforcement actions in fiscal year 2022 included both first-of-their-kind actions as well as traditional securities law violations.

The SEC obtained judgments and orders totaling $6.4 billion, the most on record in SEC history and up from $3.8 billion in fiscal year 2021. Of the total money ordered, civil penalties were also the highest on record, at $4.2 billion. Moreover, fiscal year 2022 was the SEC's second highest year ever in whistleblower awards, in terms of both the number of individuals awarded and the total dollar amounts awarded.

Noting that ESG concerns have grown increasingly among investors, the Division of Enforcement has focused attention on these issues with respect to public companies and investment products and strategies. The following enforcement actions are notable:

- A litigated matter charging a multinational mining corporation with allegedly making false and misleading claims to local governments, communities and investors about the safety of its dams prior to the collapse of the Brumadinho dam in Brazil, which killed 270 people, caused serious environmental and social harm, and reduced the company's market capitalization by more than $4 billion.

Fund managers and public companies should expect increased enforcement scrutiny from the SEC regarding ESG investment products and disclosures. Funds that market themselves as "green" or "sustainable" continue to draw increasing levels of investment but in practice can vary widely in the extent to which sustainability factors into their investment decisions.

Enforcement of the Foreign Corrupt Practices Act (FCPA) continues to be a high priority area for the SEC. In 2010, the SEC's Enforcement Division created a specialized unit to further enhance its enforcement of the FCPA, which prohibits companies issuing stock in the U.S. from bribing foreign officials for government contracts and other business. The SEC and the United States Department of Justice (DOJ) are jointly responsible for enforcing the FCPA. A list of recent FCPA cases can be found here.

At a recent New York City Bar Association event, Deputy Attorney General Lisa Monaco emphasized the DOJ's focus on sanctions evasion and export control violations as key to its work to combat corporate crime. It is unclear how the DOJ will ratchet up enforcement, but the announcement comes at a time that the tone of DOJ officials has turned much harsher on corporations, so it is certainly possible that the DOJ will look to impose harsher penalties and resolutions for violations of the sanctions laws. In addition, the link between corruption and sanctions enforcement could lead to new

Copyright 2022 Davis Polk & Wardwell LLP

overlap and collaboration by various enforcement authorities who investigate and prosecute such crimes. The DOJ's continued emphasis on compliance sends a clear signal about its expectations, and the importance of investing in compliance now to mitigate bad outcomes later. For further information, please see our client update.

Other matters that may be of interest to FPIs

Compensation recovery listing standards and disclosure rules

On October 26, 2022, the SEC adopted the final "clawback rule" mandated by the Dodd-Frank Act requiring public companies to establish and enforce policies to recover excess incentive compensation from executive officers if such amounts were "based" on material misstatements in financial reports.

The rules direct U.S. stock exchanges and securities associations to adopt listing standards requiring all listed companies, including FPIs, to adopt and comply with a written clawback policy. The clawback policy must require that any incentive compensation (including both cash and equity compensation) paid to any current or former executive officer is subject to recoupment if: (i) the incentive compensation was calculated based on financial statements that were required to be restated due to material noncompliance with financial reporting requirements, without regard to any fault or misconduct; and (ii) that noncompliance resulted in overpayment of the incentive compensation within the three fiscal years preceding the date the restatement was required.

Each listed company must also (i) file a copy of its compliant clawback policy as an exhibit to its 20-F; and (ii) in the event of a restatement, disclose how much incentive compensation was subject to recovery, how much has remained outstanding for at least 180 days since the company determined the amount owed, and, if the company decides not to recover excess incentive compensation (to the limited extent permitted), the reason(s) for this decision.

It is currently anticipated that companies must have in place compliant clawback policies in 2023 and that 2023 financial statements will be affected by the new disclosure requirements, depending on the date the applicable national securities exchange implements clawback rules. A listed company that is either (1) failing to adopt a clawback policy; (2) failing to enforce its clawback policy; or (3) failing to make the required clawback disclosures may be subject to delisting. For further information, please see our client update.

Holding Foreign Companies Accountable Act

Update

As discussed in our Preparing Your 2021 Form 20-F client update, in December 2020, the Holding Foreign Companies Accountable Act (HFCAA), which prohibits the securities of companies from being listed on U.S. securities exchanges if the Public Company Accounting Oversight Board (PCAOB) is not permitted to inspect the company's accounting firm for three consecutive years, was signed into law.

On August 26, 2022, the PCAOB signed a statement of protocol agreement (Cooperation Agreement) with the China Securities Regulatory Commission (CSRC) and the Ministry of Finance of China, which could prevent China-based, U.S.-listed firms from being delisted pursuant to the HFCAA. While the Cooperation Agreement has not been made publicly available, the SEC, the PCAOB and the CSRC published fact sheets and Q&As (PCAOB fact sheet; SEC fact sheet; SEC Q&As; CSRC's Q&As) regarding key terms in the Cooperation Agreement.

The PCAOB has finished onsite work and is expected to reassess in December 2022 whether it is able, to its satisfaction, to conduct inspections of PCAOB-registered accounting firms in mainland China and Hong Kong and also obtain information in its investigations. The SEC Q&As state that the Cooperation Agreement does not allow withholding

Copyright 2022 Davis Polk & Wardwell LLP

or redaction of information contained in audit documentation for any reason and permits the PCAOB to transfer information to the SEC in the normal course. For further information, please see our client update.

Submission and disclosure requirements

On December 2, 2021, the SEC adopted amendments to finalize rules implementing the submission and disclosure requirements in the HFCAA. These rules apply to issuers that the SEC identifies as having filed an annual report with an audit report issued by a registered public accounting firm that is located in a foreign jurisdiction and that the PCAOB is unable to inspect or investigate ("Commission-Identified Issuers"). The list of Commission-Identified Issuers is available here.

Under the SEC's new final rules, Commission-Identified Issuers must submit documentation to the SEC through the EDGAR system on or before its annual report due date that establishes that it is not owned or controlled by a governmental entity in its public accounting firm's foreign jurisdiction.

In addition, the SEC also requires a Commission-Identified Issuer to include certain additional disclosures in its annual report for itself and its consolidated foreign operating entities (including any variable-interest entity or similar structure that results in additional foreign entities being consolidated in the registrant's financial statements).

A Commission-Identified Issuer will need to comply with the submission and disclosure requirements in the annual report for each year in which it is identified. This means that if a company is identified as a Commission-Identified Issuer based on its annual report filing made in 2022 for the fiscal year ending December 31, 2021, the company will be required to comply with these requirements in its annual report filing covering the fiscal year ending December 31, 2022, that it is required to file in early 2023. For a more detailed analysis, please see our client update.

HFCAA Inline XBRL tagging requirement

The December 2021 HFCAA final rule amendments also require that all registrants add XBRL tags on the principal auditor's name, location and PCAOB identification number or the filing will be suspended (i.e., rejected) by the EDGAR system. The placement of the required tags within the SEC filing is at the discretion of the registrant.

Electronic submission of Form 144 and glossy annual reports

In June 2022, the SEC adopted a final rule that requires electronic submission of certain documents on EDGAR, including Forms 144, "glossy" annual reports and Forms 6-K, that are currently permitted to be filed in a paper format. Notably, the new rule requires companies, including FPIs, to submit on EDGAR:

- **Glossy annual reports**: The new rules will require companies to furnish their annual reports electronically on EDGAR in a PDF format not later than the date on which the report is first sent or given to shareholders. The PDF format cannot be reformatted, resized or otherwise redesigned from the original format. The submission is not deemed "filed" unless the company explicitly incorporates the report by reference.
- **Forms 144**: Affiliates of a company who sell their stock into the U.S. public markets typically rely on Rule 144, which imposes a number of requirements, including the filing of a Form 144. All Forms 144 for the sale of securities of reporting companies will be required to be filed electronically, rather than through a paper filing. For FPIs who are not subject to Section 16 reporting, insider sales have typically not been reported on EDGAR (as insiders need not file Forms 3, 4 and 5) but paper Forms 144 submitted via email to the SEC are available elsewhere on the SEC website. Going forward, Forms 144 for insiders will be filed on EDGAR and will likely achieve more immediate public coverage.

Copyright 2022 Davis Polk & Wardwell LLP

The rule changes became effective on July 11, 2022 and are subject to transition periods. An initial subset of the changes, including with respect to the submission of glossy annual reports, will apply from January 11, 2023. The Form 144 electronic filing compliance date is April 13, 2023. Insiders who plan to rely on Rule 144 may wish to apply for individual EDGAR codes in advance of the effective date of the rule change. For further information, please see our client update.

EGC revenue cap raised to $1.235 billion

In September 2022, the SEC revised the annual gross revenue cap for a company to qualify as an "emerging growth company" (EGC) from $1,070,000,000 to $1,235,000,000. The upward revision reflects the requirement under the JOBS Act that the SEC must index to inflation the annual gross revenue amount used to determine EGC status every five years. For further information, please see our client update.

SEC proposed rule amendments to modernize beneficial ownership reporting

In February 2022, the SEC proposed rule amendments to modernize the rules governing beneficial ownership reporting. The proposed amendments to Regulation 13D-G would:

- accelerate the filing deadlines for Schedules 13D and 13G beneficial ownership reports;
- expand the application of Regulation 13D-G to certain derivative securities;
- clarify the circumstances under which two or more persons have formed a "group" that would be subject to beneficial ownership reporting obligations; and
- require that Schedules 13D and 13G be filed using a structured, machine-readable data language.

Final rule amendments have not yet been adopted.

Recent developments relevant to U.S. public securities offerings

SEC amendments to filing fee disclosure and payment methods

As discussed in our Preparing Your 2020 Form 20-F client update, the SEC adopted amendments to modernize filing fee disclosure and payment methods. The amendments:

- move filing fee-related information to a separate exhibit in which companies will also be required to include all required information for filing fee calculation in a structured format; and
- add new options for Automated Clearing House (ACH) and debit and credit card payment of filing fees and eliminate infrequently used options for filing fee payment via paper checks and money orders.

The fact sheet on the amendments can be found here. The amendments generally became effective on January 31, 2022. The amendments that will add or eliminate payment options became effective on May 31, 2022. There are transition periods to allow filers time to comply with the Inline XBRL structuring requirements depending on their filer status. Compliance with the amended disclosure requirements other than the structuring requirements became mandatory on the January 31, 2022 effective date.

Copyright 2022 Davis Polk & Wardwell LLP

As of October 1, 2022, the SEC filing fee rate increased from $92.70 to $110.20 per million dollars. The SEC makes annual adjustments to the rates for fees and the annual rate changes take effect on the first day of each U.S. government fiscal year, i.e., October 1.

SEC proposed shortened settlement cycle

In February 2022, the SEC proposed to shorten the standard settlement cycle for securities transactions from two business days after the trade date (T+2) to one business day after the trade date (T+1), beginning March 31, 2024. The proposed changes are designed to reduce the credit, market and liquidity risks in securities transactions faced by market participants and U.S. investors. Parties to a trade may "override" the proposed rule by agreeing that the settlement date may be later than T+2. The proposed settlement cycle will have follow-on effects on various other rules and market practices. For further information, please see our client update.

Copyright 2022 Davis Polk & Wardwell LLP

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

Pedro J. Bermeo
+1 212 450 4091
pedro.bermeo@davispolk.com

Maurice Blanco
+55 11 4871 8402
+1 212 450 4086
maurice.blanco@davispolk.com

Leo Borchardt
+44 20 7418 1334
leo.borchardt@davispolk.com

Jon Gray
+81 3 5574 2667
jon.gray@davispolk.com

Michael Kaplan
+1 212 450 4111
michael.kaplan@davispolk.com

Yasin Keshvargar
+1 212 450 4839
yasin.keshvargar@davispolk.com

Connie I. Milonakis
+44 20 7418 1327
connie.milonakis@davispolk.com

Maxim Van de moortel
+44 20 7418 1446
maxim.vandemoortel@davispolk.com

Michael J. Willisch
+34 917 68 96 10
michael.willisch@davispolk.com

Reuven B. Young
+44 20 7418 1012
reuven.young@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

Copyright 2022 Davis Polk & Wardwell LLP