

# Preparing an Annual Report on Form 20 F – Guide for 2025

January 7, 2025

Form 20-F is the form used for an annual report of a foreign private issuer (“FPI”) filed with the U.S. Securities and Exchange Commission (the “SEC”). This alert memorandum summarizes considerations that will affect the preparation of the annual report on Form 20-F for the year ended December 31, 2024 (the “2024 20-F”) and certain other developments pertinent to FPIs.

Part I of this memorandum describes our predictions regarding changes in the SEC’s approach under the incoming Trump administration. In Part II, we review when upcoming rules are expected to go into effect. Part III of this memorandum reviews the relatively limited changes during 2024 impacting Form 20-F and other FPI filings and obligations. Part IV addresses Form 20-F disclosure topics that are attracting particular attention in SEC public statements and recent comment letters, as well as other hot topics.

This memo generally assumes that a registrant has a calendar year-end. Non-calendar year-end filers should confirm their applicable compliance dates.

Please see additional details and references to sources in the endnotes.

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# I. Anticipated Shifts in SEC Policy Under the Incoming Trump Administration

## Disclosure More Generally

Under current SEC Chairman Gary Gensler, the agency has taken a strong pro-regulation stance, emphasizing expanded rulemaking, enhanced disclosure requirements (including for FPIs) and increased oversight and enforcement across various sectors.

Following Donald Trump's election on November 5, the SEC's direction is expected to change. SEC Chairman Gensler announced on November 21, 2024 that he will step down on Inauguration Day, January 20, 2025. With President-elect Trump announcing his intention to appoint Paul Atkins as Chairman Gensler's successor, Atkins is expected to bring a more business-friendly approach, reducing regulatory constraints.<sup>1</sup>

## Climate-Related Disclosure

With the incoming Trump administration and a conservative Supreme Court, it is likely that the SEC's new climate-related disclosure rules, further discussed in Part II of this memorandum, may either be diluted or even rescinded. These rules, which are currently stayed, are applicable to all reporting companies, including FPIs reporting on Form 20-F, and would have required compliance by large accelerated filers starting in the fiscal year beginning 2025.

Regardless of whether the SEC's climate reporting rules survive under a second Trump administration, SEC Chairman Gensler has predicted that many large U.S. companies will voluntarily disclose their greenhouse gas ("GHG") emissions. SEC Chairman Gensler acknowledged the growing influence of European regulations, which will apply to U.S. firms with large EU operations starting in 2029, or earlier for companies with big EU subsidiaries. Former U.S. Treasury climate adviser John Morton similarly argued that, even if the SEC climate rules are voided, many companies will still face similar disclosure requirements in other jurisdictions such as the EU, the United Kingdom and California.

FPIs will also likely include climate-related disclosure as required under the new International Financial Reporting Standards ("IFRS") sustainability disclosure standards, further discussed in Part II of this memorandum.<sup>2</sup>

As a result, FPIs are likely to present climate-related disclosures in multiple ways, regardless of the fate of the SEC's proposed rules.

## China-Related Disclosures

The second Trump administration's expected hardline stance against China could impact the SEC's approach to FPIs, particularly those with ties to China.

President-elect Trump's proposals, which include revoking China's "most favored nation" status, increasing tariffs, restricting Chinese investments and prioritizing economic decoupling, signal further scrutiny of Chinese companies, particularly in tech and critical sectors such as electronics and pharmaceuticals. In light of the Trump campaign's rhetoric<sup>3</sup> and recent SEC actions, which appeared motivated by geopolitical concerns about China and are discussed in further depth in Part IV of this memorandum, it is possible that future SEC disclosure rules could be used to target additional countries, in line with the incoming Trump administration's economic and national security agenda.

Amidst this backdrop of likely shifting SEC policy, the coming years may bring a number of new disclosure requirements applicable to FPIs.

## II. Future and Proposed Changes

This section summarizes adopted and proposed SEC rules that will or may directly impact 20-F reporting in future years, as well as other related changes in law. These upcoming changes and proposed rules relate to disclosure regarding (A) climate change disclosure and (B) EDGAR Next.

### A. Climate Change Disclosure

This section discusses (1) the SEC's climate-related disclosure rules and (2) other trends in climate change disclosure.

#### 1. SEC Climate-Related Disclosure Rules

On April 4, 2024, the SEC announced a [voluntary stay](#) on the implementation of its new climate-related disclosure rules while nine lawsuits challenging their legality proceed in the U.S. Court of Appeals for the Eighth Circuit.

- These long-anticipated rules, adopted on March 6, 2024, seek to enhance and standardize climate-related disclosures by public companies and in public offerings. They impose comprehensive requirements for publicly traded companies to disclose detailed information across several areas<sup>4</sup> and establish staggered deadlines based on registrant type.<sup>5</sup>
- With litigation briefing now complete, the U.S. Court of Appeals for the Eighth Circuit is expected to schedule oral arguments, potentially for early 2025. A final decision on the rules' validity will follow the conclusion of these proceedings.

However, as previewed in Part I, the resignation of SEC Chairman Gensler will likely affect the ongoing litigation. Chairman Gensler was a strong advocate for these rules and his departure may weaken the SEC's resolve to defend them, if not usher in an SEC that is actively opposed to these rules. Moreover, the U.S. Court of Appeals for the Eighth Circuit, where the lawsuits are consolidated, is a conservative venue and may take a critical view of the SEC's authority to impose such comprehensive disclosure requirements.

- Registrants should generally continue to consider the Division of Corporation Finance's 2021 Sample Letter to Companies Regarding Climate Change Disclosures, [available here](#).

## 2. Trends in Climate Change Disclosure

This section summarizes trends in climate disclosure, focusing on EU-mandated climate-related reporting and new standards from the IFRS Foundation.

- **European Union:** The Corporate Sustainability Reporting Directive, effective January 5, 2023, mandates extensive sustainability and climate disclosures for entities, including EU-listed companies and multinationals with EU branches or subsidiaries generating over EUR 40 million in turnover.<sup>6</sup> The EU is developing European Sustainability Reporting Standards for non-EU companies meeting specific criteria, such as a branch or subsidiary in the EU and over EUR 150 million in EU turnover. A draft is expected by early 2025, with final approval in 2026 and implementation by 2028.<sup>7</sup>
- **International Financial Reporting Standards:** On June 26, 2023, the IFRS Foundation issued two sustainability standards: [IFRS S1](#) (sustainability-related risks and opportunities) and [IFRS S2](#) (climate-related risks and opportunities).<sup>8</sup> Countries are at different stages of adopting these standards. Nations such as the United Kingdom, South Africa, Singapore, Türkiye and Nigeria have adopted or completed consultations, while others, including Canada, Mexico, Brazil, Japan and South Korea, are conducting ongoing consultations. Australia, the Philippines and India completed consultations earlier in 2024, with adoption timelines pending.<sup>9</sup>

## B. EDGAR Next

The SEC has announced that compliance with its [EDGAR Next](#) system will become mandatory on September 15, 2025. This transition aims to enhance the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system by improving filer access and account management.

- Starting March 24, 2025, registrants will be able to enroll in the EDGAR Next platform using their legacy access codes.
- To access EDGAR, rather than simply providing EDGAR codes, registrants will need to authorize specific individuals to manage their EDGAR accounts. Any authorized individual looking to access a registrant's EDGAR account or make SEC filings will need to obtain

individual login credentials in advance and complete multi-factor authentication each time they log in.

- New registrants or those unable to enroll must submit the amended Form ID to gain access.

### III. Recent Changes to Form 20-F and the FPI Disclosure Regime

During 2024, limited changes impacting the Form 20-F and other FPI reporting came into effect. These changes include new requirements relating to: (A) insider trading, (B) share repurchase disclosure modernization, which was initially scheduled to take effect in 2024 but did not, (C) cybersecurity, (D) beneficial ownership reporting modernization, (E) Nasdaq rules and (F) SPAC IPO disclosure requirements.<sup>10</sup>

#### A. Insider Trading Arrangements

On December 14, 2022, the SEC adopted amendments to Exchange Act Rule 10b5-1 and related disclosure requirements.<sup>11</sup> Rule 10b5-1 provides affirmative defenses to trading on the basis of material nonpublic information in insider trading cases through the use of 10b5-1 plans. These plans are passive trading plans that allow companies and company insiders to transact in company securities so long as the plans were adopted in good faith before the insider came into possession of material nonpublic information. The amendments “add new conditions to this rule that are designed to address concerns about abuse of the rule to trade securities opportunistically.”<sup>12</sup>

For December 31 fiscal year registrants, the disclosures are generally required for the first time this year in the 2024 20-F.<sup>13</sup> However, the related cooling-off period (described below) has already been in effect since 2023. The amendments include:

- **New This Year:**
  - **Disclosure Regarding Insider Trading Policy (Item 16J):**
    - Pursuant to new Item 16J in Form 20-F, registrants are required to disclose whether they have adopted policies and procedures governing the purchase, sale and other dispositions of their securities by directors, officers, employees or the registrant itself that are reasonably designed to promote compliance with insider trading laws, rules, regulations and any listing standards applicable to the registrant. This information must be reported in Inline XBRL.
    - If a registrant has not adopted such insider trading policies and procedures, it must explain why not. FPIs that have not yet adopted insider trading policies should consider

doing so to avoid the requirement of disclosing why they believe the adoption of such policies is not necessary.

- **Insider Trading Policy (Exhibits)**: The amendments require the registrant to file a copy of its insider trading policies and procedures as an exhibit to Form 20-F. The requirement is satisfied if such policies are already in the ethics policy filed pursuant to Item 16B.
- **Sarbanes-Oxley Section 302 (Certifications)**: The disclosures required above are subject to Section 302 of the Sarbanes-Oxley Act of 2002 requirements for CEO and CFO certifications.
- **Already in Effect:**
  - **Cooling-Off Period**: For plans entered into or changed on or after February 27, 2023, the amendments impose a cooling-off period on 10b5-1 plan trades for directors and officers lasting until the later of (1) 90 days after the adoption of the contract, instruction or plan or (2) two days after disclosure of quarterly or annual financial results on Form 20-F or Form 6-K, but, in any event, the cooling-off period shall not be longer than 120 days. For all persons other than issuers, directors and officers, the cooling-off period is 30 days.<sup>14</sup>

For more information on the insider trading rule changes, see our alert memo, [available here](#).

## B. Share Repurchases

In May 2023, the SEC adopted final rules requiring more detailed qualitative and quantitative disclosure regarding share repurchases (the “share repurchase rules”).<sup>15</sup> These rules became effective in July 2023 and would have required disclosure in new Form F-SR (generally beginning 45 days after the end of 2Q24) and new Item 16E of Form 20-F (generally beginning in the 2024 20-F).

However, in October of 2023, the U.S. Court of Appeals for the Fifth Circuit held that the SEC violated the Administrative Procedure Act by acting arbitrarily and capriciously when it adopted the share repurchase rules.<sup>16</sup> Effective December 19, 2023, the U.S. Court of Appeals for the Fifth Circuit vacated the rules.<sup>17</sup>

As a result, effective April 8, 2024, the SEC amended Item 16E to revert to the disclosure requirements in place before adoption of the share repurchase rules.<sup>18</sup>

The share repurchase rules had replaced the existing requirement under Item 16E to include a table disclosing monthly repurchase data in the Form 20-F. With the new rules vacated, registrants should continue to include this tabular disclosure in their Form 20-F, as they have done in the past.

## C. Cybersecurity

On July 26, 2023, the SEC formalized its longstanding focus on cybersecurity disclosure by adopting rules to enhance and standardize disclosure requirements related to cybersecurity incident reporting, along with cybersecurity risk management, strategy and governance.<sup>19</sup>

The final cybersecurity rules added disclosure requirements to both Form 20-F and Form 6-K. For December 31 fiscal year registrants, Form 20-F cybersecurity disclosures were required for the first time in the 2023 20-F. Form 6-K cybersecurity disclosures were required starting on December 18, 2023.<sup>20</sup>

For further discussion of the final cybersecurity rules and related disclosure requirements, please see our memo *Preparing an Annual Report on Form 20-F – Guide for 2024*, available [here](#).

- **New This Year**: Inline XBRL tagging for cybersecurity disclosures is required as of December 15, 2024, meaning that it applies for the first time to the 20-F for FY24. Inline XBRL tagging of cybersecurity disclosures in Form 6-K is required beginning on December 18, 2024.

## D. Beneficial Ownership Reporting Modernization

On October 10, 2023, the SEC adopted final rules modernizing beneficial ownership reporting by shortening filing deadlines for Schedules 13D and 13G, clarifying disclosure requirements for derivative securities and extending the filing cut-off time. The amendments became effective February 5, 2024, and compliance with new Schedule 13G deadlines was required by September 30, 2024.

- **New This Year**: As of December 18, 2024, registrants are required to make Schedule 13D and 13G filings using a structured, machine-readable data language (Inline XBRL is not required).

For further discussion of the rules modernizing beneficial ownership reporting and related disclosure requirements, please see our memo *Preparing an Annual Report on Form 20-F – Guide for 2024*, available [here](#).

## E. Nasdaq Rules

### 1. Board Diversity Rules

On December 11, 2024, the Fifth Circuit struck down Nasdaq's board diversity rules.<sup>21</sup> The rules required registrants listed on Nasdaq to publicly disclose board-level diversity statistics and either have, or explain why they do not have, a requisite number of diverse directors. The phase-in began in the 20-F for year-end 2022 and was ongoing. The court ruled that these rules, which were approved by the SEC, exceeded the SEC's statutory authority under the Securities Exchange Act of 1934 by prioritizing social policy over market efficiency and investor protection. The court therefore vacated the SEC order approving Nasdaq's board diversity rules.

The decision relieves Nasdaq-listed registrants, as they are no longer required to meet or justify non-compliance with Nasdaq's diversity targets. It also increases the likelihood of legal challenges to similar initiatives, such as the [human capital](#) and [corporate board diversity](#) rules that the SEC outlined in its Fall 2024 Regulatory Agenda, to the extent that it elects to continue to pursue these initiatives, which were proposed under Chairman Gensler and were considered for October 2025.<sup>22</sup>

While companies may still pursue voluntary disclosure of board diversity, this ruling reinforces the need for regulatory mandates to align closely with statutory objectives, limiting the SEC's flexibility in shaping disclosure requirements.

For further discussion of what the Nasdaq board diversity rules required, please see our memo [Preparing an Annual Report on Form 20-F – Guide for 2024](#), available [here](#).

## 2. Corporate Governance Amendments

On August 26, 2024, the SEC approved amendments to Nasdaq's Listing Rules 5605, 5615 and 5810, which took effect immediately.<sup>23</sup> These changes clarify and adjust phase-in timelines for independent director and committee requirements. Companies undergoing an initial public offering ("IPO") may now delay meeting the requirement to have at least three audit committee members, aligning with the phase-in schedule under Rule 10A-3 of the Exchange Act.<sup>24</sup> Additionally, the timing for appointing an independent director to the compensation and nomination committees has been updated to reflect standard IPO practices.<sup>25</sup>

The amendments also refine phase-in schedules for companies emerging from bankruptcy, transferring from other exchanges, losing their status as foreign private issuers or undergoing carve-out or spin-off transactions.<sup>26</sup> While many of these updates codify Nasdaq's existing practices, they also harmonize Nasdaq's rules with those of the NYSE, ensuring greater consistency across exchanges.

Under these new rules, the following timelines apply:<sup>27</sup>

- **Independent Director**: Companies listing in connection with an IPO can comply with the requirement of having one independent director on their compensation and nomination committees by appointing an independent director to such committees no later than the earlier of the date the IPO closes or five business days from the listing date.
- **Compensation Committee**: As to the requirement to have at least two members on the compensation committee, the company must have at least one member by the listing date and at least two members within one year of the listing date.
- **Audit Committee**: Companies listing in connection with an IPO may phase in compliance with the requirement of having a minimum of three members on their audit committee by having at least one member by the listing date, at least two members within 90 days of the listing date and at least three members within one year of the listing date.



## F. SPAC IPO Investor Protections

On January 24, 2024, the SEC adopted amendments to Regulation S-X by adding Rule 15-01 to enhance disclosures and provide additional investor protections in IPOs by special purpose acquisition companies (“SPACs”) and in subsequent business combination transactions between SPACs and target companies, or “de-SPAC” transactions.<sup>28</sup> Rule 15-01 establishes auditing and financial statement disclosure requirements for acquisitions involving shell companies, excluding those formed by a non-shell company for business combinations. While it primarily addresses U.S. domestic registrants, it has some of the following applicability to FPIs involved in shell company transactions that are filing on Form 20-F.

- **Disclosure Regarding Acquisitions of Businesses by a Shell Company (Instruction 4 to Item 8)**: Instruction 4 to Item 8 of Form 20-F was modified to enhance SPAC financial statement disclosure requirements and broaden the scope of entities subject to these requirements.
  - A specific instruction to provide the financial statements required by Rule 15-01 of Regulation S-X was replaced with a general instruction to see Rule 15-01 of Regulation S-X. This change is intended to reflect that the financial statement requirements extend beyond just those of Rule 15-01.
  - Instruction 4 now clarifies that it applies to “super 20-F” filings for any FPI that was a shell company immediately before a transaction causing it to cease being a shell company and for Form 20-F when used as a registration statement so that a shell company would not need to comply with Rule 15-01 when it is filing its annual report before acquiring a business.
  - The term “shell company that will acquire a business” was changed to “shell company that is combining with a business” to include more acquisition structures.
  - References to “predecessor” were also removed, making the instructions applicable to both predecessor and non-predecessor entities.
- As a result of these changes, when an FPI is involved in a shell company transaction, FPIs filing on Form 20-F must include the following:
  - Financial statements of predecessors or acquired businesses, which must be audited by PCAOB-registered accountants following PCAOB standards.
  - If an FPI acquires a shell company or includes predecessor or acquired business financials in filings, those financial statements must adhere to the rule’s significance tests and inclusion standards.

## IV. Disclosure Trends and Other Considerations

The following issues have drawn the attention of the SEC, or are likely to do so, and should be considered in the preparation of the 2024 20-F. These issues include: (A) topics of SEC statements, (B) armed conflicts, (C) economic conditions, (D) sanctions, (E) elections, (F) China-related disclosures and (G) artificial intelligence.

### A. Topics of SEC Statements

This section discusses on the topics of focus impacting FPIs identified by Erik Gerding, the Director of the Division of Corporation Finance at the SEC, in a [statement](#) this past June 2024.

#### 1. Amended Segment-Reporting Standards

In his June 2024 statement, Corporation Finance Director Gerding highlighted amended segment reporting standards as an area of focus, emphasizing this requirement's role in enhancing transparency for investors. As a reminder, starting with fiscal years beginning on or after December 15, 2023, FPIs using U.S. GAAP must disclose detailed segment expense information under the updated ASC 280 Segment Reporting Standard.<sup>29</sup>

#### 2. Non-GAAP Financial Measures

Corporation Finance Director Gerding additionally emphasized the importance of accurate and transparent non-GAAP financial measures in corporate disclosures. As a reminder, registrants must prioritize GAAP metrics in their financial reporting, ensuring that any non-GAAP measures are presented with equal or lesser prominence, and providing clear reconciliations between non-GAAP measures and their most directly comparable GAAP counterparts. Registrants should avoid misleading adjustments in non-GAAP measures, particularly those that exclude normal, recurring cash operating expenses essential to business operations. These disclosure considerations also apply to “non-IFRS” disclosures.<sup>30</sup>

### B. Armed Conflicts

This section discusses what registrants should consider when making disclosures dealing with ongoing armed conflicts. Specifically, this section covers (1) the Middle East and (2) Russia-Ukraine.

#### 1. The Middle East

Registrants that may have disclosure obligations related to the Israel-Hamas conflict, the fall of the Assad regime in Syria or other recent geopolitical events in the Middle East should consider including the following topics, which are based on SEC guidance for the Russia-Ukraine conflict, in their required disclosures:

- Direct or indirect exposure to the areas of conflict via operations, employee base, investments or securities;
- Direct or indirect reliance on goods or services sourced in the areas of conflict;
- Actual or potential disruptions in the registrant’s supply chain; and
- Business relationships, connections to or assets in the areas of conflict or in neighboring countries.

Registrants’ financial statements may also need to reflect and disclose the impairment of assets, changes in inventory valuation, deferred tax asset valuation allowance, disposal or exiting of a business, de-consolidation, changes in exchange rates and changes in contracts with customers or the ability to collect contract considerations.

Registrants should consider how the above topics affect management’s evaluation of controls and procedures and the role of the board of directors in risk oversight.

Registrants without direct exposure may want to consider revising risk factors and forward-looking statements regarding geopolitics, armed conflicts and similar topics.

## 2. Russia-Ukraine

On May 3, 2022, the SEC’s Division of Corporation Finance published a Sample Letter to Companies Regarding Disclosures Pertaining to Russia’s Invasion of Ukraine and Related Supply Chain Issues, available [here](#).

For analysis of the SEC letter and further information on what to consider when making Russia-Ukraine disclosures, please see our memo Preparing an Annual Report on Form 20-F – Guide for 2023, available [here](#).

## C. Economic and Market Conditions

Heading into 2025, inflation remains a significant concern despite showing signs of easing from its peak in 2022. The Federal Reserve’s policies, which have included aggressive interest rate hikes since 2022, have been central to efforts to control inflation. As of mid-2024, inflation had slowed to 2.6% on a year-over-year basis according to the PCE index, though it remains above the Fed’s 2% target.<sup>31</sup> The Federal Reserve’s aggressive actions to curb inflation, including multiple rate hikes, have resulted in a restrictive monetary policy environment. As of mid-2024, the federal funds rate remains at target levels in the range of 5.25% to 5.50%, with the Federal Reserve signaling that it may hold rates steady or make cautious adjustments as inflation trends stabilize.<sup>32</sup>

In response to these ongoing inflationary pressures, the SEC has focused on enhancing corporate disclosures related to inflation. Their 2024 comment letters emphasize the need for registrants to (1) provide detailed disclosures about how inflation has impacted a registrant's operations, including specific factors contributing to these pressures and the actions being taken to address them, and (2) align their verbal and written statements, with the SEC flagging inconsistencies between inflation disclosures in earnings calls and official filings.<sup>33</sup> After a sustained period of low interest rates, interest rates rose drastically in 2022, continued to rise in 2023, and have remained relatively stable in 2024, although declining in late 2024.<sup>34</sup> Higher interest rates can have multiple impacts on registrants, including on interest expense, investment strategy, liquidity, cost of funding and access to the capital markets, as well as on assumptions and estimates underlying certain financial statement line items. Registrants should carefully review their 2024 20-F for areas that should be updated to reflect the ongoing high interest rate environment and associated risks, including their quantitative and qualitative disclosure about market risk, financial statements, risk factors and MD&A.

## D. Iran Sanctions

While not directly noted in the Form 20-F, Exchange Act Section 13(r) imposes an obligation on registrants to report information regarding dealings with Iran and other sanctioned entities in their Form 20-F, including: (A) the nature and extent of the activity, (B) the gross revenues and net profits, if any, attributable to the activity and (C) whether the registrant or an affiliate of the registrant intends to continue the activity.<sup>35</sup>

While this is not a new requirement, registrants should be sure that they are aware of it and have appropriate screening in place, particularly given the proliferation of sanctioned entities in recent years.

## E. Elections

A registrant's Form 20-F should describe management's views on the risks posed by the United States and any other relevant election outcomes or political and government actions taken as a result of recent elections, to the extent material, and any actions the registrant is taking to address those risks. If a registrant believes it is likely to be impacted by contemplated tariffs, it should disclose this risk. Companies should avoid boilerplate disclosure merely stating that the elections present a risk with an uncertain outcome that could materially and adversely impact the business and its operations.

## F. China-Related Disclosures

As previewed in Part I of this memorandum, a second Trump administration will likely prompt the SEC to adopt a stricter, enforcement-focused stance toward FPIs with ties to China, especially in relation to the points highlighted in the SEC sample comment letter published on July 17, 2023, [available here](#). The letter lays out three priority areas of disclosure for companies based in or with a majority of their operations in China: (1) obligations that companies have under the Holding Foreign Companies Accountable Act ("HFCAA"), (2) more specific and prominent disclosure about material risks related to

the role of the government of China in the operations of China-based companies and (3) disclosures required under certain statutes, such as the Uyghur Forced Labor Prevention Act, which became law in 2021.

For further discussion of the HFCAA and Item 16I on Form 20-F, please see our memo Preparing an Annual Report on Form 20-F – Guide for 2023, available [here](#).

## G. Artificial Intelligence

Use of artificial intelligence (“AI”) and machine learning continued to evolve in 2024. In his June 2024 statement on the state of disclosure review, Corporation Finance Director Gerding emphasized that AI is a priority for staff review.<sup>36</sup>

The statement noted that when reviewing disclosure, SEC staff will consider how registrants are describing opportunities and risks relating to AI, including whether, to the extent material, a registrant:

- Clearly defines what it means by AI and how the technology could improve the registrant’s results of operations, financial condition and future prospects;
- Provides tailored, rather than boilerplate, disclosures, commensurate with the issue’s materiality to the registrant, about material risks and the impact the technology is reasonably likely to have on its business and financial results;
- Focuses on the registrant’s current or proposed use of AI technology rather than generic statements not relating to its business; and
- Has a reasonable basis for its claims when discussing AI prospects.

In a separate speech, Corporation Finance Director Gerding also noted that disclosure should be refreshed regularly, as a registrant’s use of AI is expected to change frequently with the rapid advancements in the space.<sup>37</sup> Further, SEC Chairman Gensler has remarked that if management is talking about AI on an earnings call, there is a fair question about whether it is material and should be disclosed in business, risk factors and MD&A sections in SEC reports.<sup>38</sup>

In April 2024, SEC Enforcement Director Gurbir S. Grewal addressed the issue of “AI-washing,” where companies make exaggerated or false claims about their use of AI. Enforcement Director Grewal urged companies to ensure that any statements regarding their AI capabilities are not materially false or misleading, emphasizing that such representations could violate securities laws and highlighting the agency’s commitment to enforcing against deceptive AI-related disclosures.<sup>39</sup>

The SEC Investor Advisory Committee hosted a panel this past June aiming to discuss and provide insights on how the SEC may promote the advancement of AI.<sup>40</sup> Ultimately, the SEC aims to enhance market integrity and investor confidence while promoting international coordination to prevent

regulatory arbitrage.<sup>41</sup> Yet recent enforcement actions by the SEC suggest that the agency does not need to wait for AI-specific rules or legislation: following an “AI Sweep” in late 2023, the SEC settled charges against two investment advisors for false and misleading claims related to the use of AI and, this past October, the SEC charged an investment advisory firm and its management with defrauding investors.

Even if AI is not a significant aspect of a registrant’s business, its assets or operations still may be impacted in a way that may expose the business to some material risk. A registrant will want to review its 2024 20-F and consider appropriate adjustments to reflect the ongoing development and deployment of AI. As with other developing disclosure areas, registrants should review peers’ disclosure in this area and make sure that they are generally in line with their industry.

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<sup>1</sup> In its Fall 2024 Regulatory Agenda published in December 2024, the SEC indicated it would consider proposing new amendments in April 2025 to modernize the FPI regulatory framework. Given that this agenda was developed before the 2024 election and is subject to change, it is yet unclear what, if any, changes FPIs may expect as part of this modernization proposal. *See View Rule, SEC - Foreign Issuer Reporting Modernization*, OFFICE INFO. & REGUL. AFFS.,

<https://www.reginfo.gov/public/do/eAgendaViewRule?publd=202410&RIN=3235-AN35> (last visited Dec. 28, 2024).

<sup>2</sup> On June 26, 2023, the IFRS Foundation issued two sustainability standards. *IFRS S1* seeks to require an entity to disclose information about its sustainability-related risks and opportunities that would be useful to users of its financial reports in making decisions about providing resources to the entity; *IFRS S2* has a similar aim with regard to climate-related risks. *See ISSB Issues Inaugural Global Sustainability Disclosure Standards*, IFRS (June 26, 2023), <https://www.ifrs.org/news-and-events/news/2023/06/issb-issues-ifrs-s1-ifrs-s2/>.

<sup>3</sup> *See Foreign Policy Priorities: Donald Trump’s Positions*, COUNCIL ON FOREIGN RELS., available at <https://www.cfr.org/election2024/candidate-tracker/donald-trump>.

<sup>4</sup> Under the SEC’s final climate-related disclosure rules, registrants must report on GHG emissions, including direct emissions from operations (Scope 1), indirect emissions from purchased energy (Scope 2) and, in some cases, emissions from their value chain (Scope 3). Additionally, registrants are required to outline governance structures for

overseeing climate-related risks, including the roles of management and the board. The rules also mandate disclosures about how registrants identify, assess and manage climate-related risks, as well as any climate-related targets or goals they have set and progress toward those goals. Registrants must further disclose significant expenditures associated with climate mitigation or transition plans, as well as the financial impacts of severe weather events and activities related to transitioning to lower-carbon operations. *See Enhancement and Standardization of Climate-Related Disclosures for Investors*, Exchange Release Nos. 33-11275; 34-99678 (Mar. 6, 2024), available at <https://www.sec.gov/files/rules/final/2024/33-11275.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, 2022 O.J. (L 322/15), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464>.

<sup>7</sup> Jon McGowan, *EU Moves Forward with Drafting Sustainability Reporting Standards for Non-EU Companies*, FORBES (Oct. 30, 2024), <https://www.forbes.com/sites/jonmcgowan/2024/10/30/eu-moves-forward-with-drafting-sustainability-reporting-standards-for-non-eu-companies/>.

<sup>8</sup> *ISSB Issues Inaugural Global Sustainability Disclosure Standards*, IFRS (June 26, 2023), <https://www.ifrs.org/news-and-events/news/2023/06/issb-issues-ifrs-s1-ifrs-s2/>.

<sup>9</sup> *Jurisdictional Sustainability Consultations*, IFRS, <https://www.ifrs.org/ifrs-sustainability-disclosure-standards-around-the-world/jurisdiction-consultations-on-sustainability-related-disclosures/> (last visited December 29, 2024)

<sup>10</sup> Section 6081 of the Senate version of the 2024 National Defense Authorization Act had proposed subjecting FPIs to the Section 16 short-swing profits regime. However, the proposal did not make it through conference and is dead for the foreseeable future. See Alan Dyle, *Proposal to Rescind Section 16 Exemption for Foreign Private Issuers Dies in Conference*, ROMEO & DYE'S SECTION16.NET (Dec. 10, 2023), <https://www.section16.net/member/blogs/adyle/2023/12/proposal-to-rescind-section-16-exemption-for-foreign-private-issuers-dies-in-conference.htm>.

<sup>11</sup> Insider Trading Arrangements and Related Disclosures, Exchange Act Release Nos. 33-11138; 34-96492 (Dec. 14, 2022), available at <https://www.sec.gov/rules/final/2022/33-11138.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> The amendments apply to the first filing that covers the first full fiscal period that begins after April 1, 2023. *Id.* at 107. Because these requirements do not apply to Form 6-K, the first filing subject to them for December 31 fiscal year registrants is the 20-F for the fiscal year ended December 31, 2024. *Id.* at 115. The amendments also defer the date of compliance by six months for smaller reporting companies. *Id.* at 107.

<sup>14</sup> No required cooling-off period was adopted for company 10b5-1 buyback plans, although the SEC noted it may revisit the issue in the future.

<sup>15</sup> Share Repurchase Disclosure Modernization, Exchange Act Release Nos. 34-97424; IC-34906 (May 3, 2023), available at <https://www.sec.gov/files/rules/final/2023/34-97424.pdf>.

<sup>16</sup> See *Chamber of Com. of United States v. United States Sec. & Exch. Comm'n*, 88 F.4th 1115 (5th Cir. 2023).

<sup>17</sup> See *id.*

<sup>18</sup> Share Repurchase Disclosure Modernization, Exchange Act Release Nos. 34-99778; IC-35157 (Mar. 19, 2024), available at <https://www.sec.gov/files/rules/final/2024/34-99778.pdf>.

<sup>19</sup> Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Exchange Act Release Nos. 33-11216; 34-97989 (July 26, 2023), available at <https://www.sec.gov/files/rules/final/2023/33-11216.pdf>.

<sup>20</sup> All registrants must provide the disclosures required under Item 16K of Form 20-F beginning with annual reports for fiscal years ending on or after December 15, 2023. See *id.* at 107.

<sup>21</sup> See *Alliance for Fair Board Recruitment v. SEC*, No. 21-60626, (5th Cir. 2024).

<sup>22</sup> See *View Rule, SEC – Corporate Board Diversity*, OFFICE INFO. & REGUL. AFFS.,

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202410&RIN=3235-AL91> (last visited Dec. 28, 2024).

This agenda was developed before the 2024 election and is subject to change.

<sup>23</sup> See Self-Regulatory Organizations; Nasdaq Stock Market LLC; Order Granting Approval of a Proposed Rule Change to Rules 5605, 5615 and 5810, Exchange Act Release No. 34-100816 (Aug. 26, 2024), 89 FR 70674, available at <https://www.sec.gov/files/rules/sro/nasdaq/2024/34-100816.pdf>.

<sup>24</sup> 17 CFR 240.10A-3(b)(1)(iv)(A).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See Self-Regulatory Organizations; Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Rules 5605, 5615 and 5810, Exchange Act Release No. 100208 (May 22, 2024), 89 FR 46528, available at <https://www.sec.gov/files/rules/sro/nasdaq/2024/34-100208.pdf>.

<sup>28</sup> Special Purpose Acquisition Companies, Shell Companies, and Projections, Exchange Release Nos. 33-11265; 34-99418; IC-35096 (Jan. 24, 2024), available at <https://www.sec.gov/files/rules/final/2024/33-11265.pdf>.

<sup>29</sup> See Financial Accounting Standards Board, Accounting Standards Update, No. 2023-07, Segment Reporting (Topic 280) (Nov. 2023), [https://www.fasb.org/page/ShowPdf?path=ASU%202023-07.pdf&title=ACCOUNTING%20STANDARDS%20UPDATES%202023-07%E2%80%94Segment%20Reporting%20\(Topic%20280\)%20Improvements%20to%20Reportable%20Segments](https://www.fasb.org/page/ShowPdf?path=ASU%202023-07.pdf&title=ACCOUNTING%20STANDARDS%20UPDATES%202023-07%E2%80%94Segment%20Reporting%20(Topic%20280)%20Improvements%20to%20Reportable%20Segments).

<sup>30</sup> See *Non-GAAP Financial Measures*, Sec. Exch. Comm'n (Dec. 13, 2022), <https://www.sec.gov/corpfin/non-gAAP-financial-measures.htm>.

<sup>31</sup> See *Board of Governors of the Federal Reserve System, Monetary Policy Report – July 2024 Summary*, FED. RSRV., <https://www.federalreserve.gov/monetarypolicy/2024-07-mpr-summary.htm>.

<sup>32</sup> *Id.*

<sup>33</sup> See Ernst & Young, *SEC Reporting Update: Highlights of Trends in 2024 SEC Staff Comment Letters* (Sept. 12, 2024), available at <https://www.ey.com/content/dam/ey-unified-site/ey-com/en-us/technical/accountinglink/documents/ey-secru24439-241us-09-12-2024.pdf>.

<sup>34</sup> See *Board of Governors of the Federal Reserve System, H.15: Selected Interest Rates*, FED. RSRV. (Nov. 21, 2024), <https://www.federalreserve.gov/releases/H15/default.htm>.

<sup>35</sup> 15 U.S.C. § 78m.

<sup>36</sup> See Erik Gerding, Director of Division of Corporation Finance, Sec. Exch. Comm'n, Statement: State of Disclosure Review (June 24, 2024) (last updated June 29, 2024), available at

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<https://www.sec.gov/newsroom/speeches-statements/gerding-statement-state-disclosure-review-062424>.

<sup>37</sup> See Erik Gerding, Director of Division of Corporation Finance, Sec. Exch. Comm'n, Remarks at the 56th Annual Institute on Securities Regulation (Nov. 13, 2024), available at <https://www.pli.edu/programs/institute-on-securities-regulation>.

<sup>38</sup> See Gary Gensler, Chairman, Sec. Exch. Comm'n, Address at Yale Law School: AI, Finance, Movies, and the Law (Feb. 13, 2024) (last updated July 2, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/gensler-ai-021324>.

<sup>39</sup> See Gurbir S. Grewal, Enforcement Director, Sec. Exch. Comm'n, Remarks at Program on Corporate Compliance and Enforcement Spring Conference 2024 (Apr. 15, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/gurbir-remarks-pcce-041524>.

<sup>40</sup> See *Investor Advisory Committee Meeting Agenda 060624*, Sec. Exch. Comm'n (June 6, 2024) (last updated

July 5, 2024), <https://www.sec.gov/about/advisory-committees/investor-advisory-committee/iac060624-agenda>.

<sup>41</sup> The SEC's approach to AI regulation focuses on balancing risk mitigation with fostering innovation, prioritizing areas such as systemic risk, transparency, algorithmic bias, cybersecurity and privacy. The agency seeks to ensure AI systems in finance are transparent, fair and secure, with specific attention to AI-based financial products, robo-advisors and the prevention of AI-driven fraud. The SEC advocates for dual regulatory approaches: one that involves regulating the technology itself through transparency, testing and technical standards, and another focused on use-case outcomes, applying risk-based scrutiny and sector-specific rules. Ultimately, the SEC aims to enhance market integrity and investor confidence while promoting international coordination to prevent regulatory arbitrage. See CFU, *IAC Panel Discussion: AI Regulation – Embracing the Future* (May 28, 2024) (last updated July 5, 2024) <https://www.sec.gov/files/sec-cfu-presentation.pdf>.