

Preparing An Annual Report on Form 20-F – Guide for 2023

January 5, 2023

This alert memorandum summarizes considerations that will affect the preparation of the annual report of a foreign private issuer on Form 20-F for the year ended December 31, 2022.

During 2022, there were very limited changes impacting Form 20-F. Part I of this memorandum reviews these changes.

In Part II, we review upcoming changes and new rules proposed by the SEC. Part III addresses Form 20-F disclosure topics that are attracting particular attention in SEC public statements, recent comment letters and changes in other areas.

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

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I. Recent Changes to Form 20-F

Form 20-F is the form used for an annual report (“Annual Report”) of a foreign private issuer (“FPI”) filed with the U.S. Securities and Exchange Commission (the “SEC”). During 2022, there were very limited changes impacting Form 20-F. These changes include: (A) Nasdaq board diversity rules and (B) elimination of certain paper filings.

A. Nasdaq Board Diversity Rules

On August 6, 2021, the SEC approved Nasdaq’s Board Diversity Rules (“Board Diversity Rules”), which Nasdaq instituted “to encourage a minimum board diversity objective” for companies and “provide stakeholders with consistent, comparable disclosures concerning a company’s current board composition.”¹ The Board Diversity Rules require 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.² Under the Board Diversity Rules, FPIs are required to have either (i) two directors who are female or (ii) one director who is female and one director who is an underrepresented individual in the home country³ jurisdiction.⁴ An underrepresented individual in the home country jurisdiction is defined as “a person who self-identifies as an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious, or linguistic identity in the country of the Foreign Issuer’s principal executive offices.”⁵

The Board Diversity Rules can be addressed directly in the 20-F or on the registrant’s website, and the information must be provided using Nasdaq’s prescribed matrix.⁶ It is expected that registrants will use D&O questionnaires to obtain diversity information about members of their boards. Directors are not obligated to self-identify, and companies can indicate “N/A” for any director who chooses not to self-identify, but we expect registrants will want to highlight the diversity of their board members.

Below is a summary of the transition period for registrants listed on Nasdaq prior to August 6, 2021:⁷

- **20-F for YE2022**: Disclose diversity information about board members in a prescribed matrix.⁸
- **20-F for YE2023**: Have at least one diverse director or explain why not.⁹
- **20-F for YE2025**: For registrants listed on the Nasdaq Global Select or Global Markets with at least six directors, have at least two diverse directors or explain why not.¹⁰
- **20-F for YE2026**: For registrants listed on the Nasdaq Capital Market with at least six directors, have at least two diverse directors or explain why not.¹¹

For helpful information specific to FPIs regarding the Board Diversity Rules, see Nasdaq’s memo, [available here](#).

B. Elimination of Certain Paper Filings

Effective July 11, 2022, the SEC added Item 10J to Form 20-F as part of amendments to require certain forms that currently are permitted to be submitted in paper format to be submitted electronically.¹² Under the amendments, if a registrant is required to provide a “glossy” annual report to its securityholders in response to the requirements of Form 6-K, the registrant must submit the “glossy” annual report on EDGAR in electronic (.pdf) format.¹³ Notably, the SEC did not impose a *new* requirement to file the “glossy” annual report, and while the change appears *on* Form 20-F, it imposes no new requirement in respect to that Form.

Relatedly, the amendments also require certain 6-K filings that previously were permitted to be paper-filed to now be filed electronically rather than in paper.¹⁴ Electronic rather than paper filing means that this information will be more readily available to the market.

II. Upcoming Changes and Proposed SEC Rules

The following summarizes upcoming changes and proposed SEC rules that will or may directly impact 20-F reporting in future years. These upcoming changes and proposed rules relate to disclosure regarding: (A) compensation recovery, (B) resource extraction payments, (C) insider trading arrangements, (D) climate change, (E) cybersecurity and (F) share repurchases.

A. Compensation Recovery

On October 26, 2022, the SEC adopted certain amendments to the Form 20-F to implement § 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 related to compensation recovery, or “claw back,” disclosure.¹⁵ This requirement is noteworthy because it applies to both domestic companies and FPIs, whereas most of the SEC’s rules relating to executive compensation disclosure historically have applied only to domestic companies.

These changes are generally expected to apply for the first time to the 20-F for YE2023¹⁶ and include:

- **Two New Check Boxes (Cover Page)**: Two new cover page check boxes will require registrants to indicate (1) whether the financial statements correct any errors to previous statements; and (2) whether any corrections are restatements that required a recovery analysis of incentive-based compensation.¹⁷
- **Disclosure of Action to Recover Erroneously Awarded Compensation (Item 6)**: New Item 6.F will require registrants that were required to prepare an accounting restatement during the last fiscal year to disclose whether the restatement required recovery of previously awarded compensation pursuant to the associated recovery of erroneously awarded compensation.¹⁸
- **Compensation Recovery Policy (Exhibits)**: Registrants will be required to submit as an exhibit their compensation recovery policy.¹⁹

The timing of these changes is dependent upon when exchanges file proposed listing standards required by the rule. Exchanges are required to file proposed listing standards no later than February 27, 2023, which is 90 days after the release was published in the Federal Register, and the listing standards must be effective no later than November 28, 2023, or one year after the release was published in the Federal Register.²⁰ The listing standards adopted by the exchanges will require registrants listed on the exchanges to adopt a compensation recovery policy that complies with the applicable listing standards. As such, registrants will be required to adopt a recovery policy no later than 60 days following the date on which the applicable listing standards become effective.²¹ We expect that registrants with existing recovery policies will need to review and revise such policies in light of the new requirements.

For more information on the compensation recovery rules, see our alert memo, [available here](#).

B. Resource Extraction Payments

On December 16, 2020, the SEC adopted Rule 13(q)-1 requiring registrants that are required to file a Form 20-F and engage in the commercial development of oil, natural gas or minerals (“Resource Extraction Issuers”) to provide annual disclosures of amounts paid to governments for the purpose of such developments on Form SD.²² After a two-year transition period, registrants will be required to annually submit Form SD not later than 270 days following the end of the fiscal year – the effective date of the rule is March 16, 2021, so given the two-year transition period, a registrant with a December 31 fiscal year end would be required to submit by September 30, 2024 disclosure for the fiscal year ended December 31, 2023.²³

Four exemptions exist that may allow registrants to avoid resource extraction payments disclosure:²⁴

- **Exemption 1 – Foreign Law Prohibits Disclosure:** Registrants are exempt from disclosure if foreign law prohibits disclosure. However, the registrant must nonetheless file a Form SD explaining the conflict with foreign law.
- **Exemption 2 – Conflicts With Preexisting Contracts:** Registrants are exempt from disclosure where the terms of a contract existing in writing prior to March 16, 2021 prohibit disclosure. However, the registrant must nonetheless file a form SD explaining the conflict with the preexisting contract.
- **Exemption 3 – Smaller Reporting Companies and Emerging Growth Companies:** Smaller reporting companies²⁵ and emerging growth companies²⁶ are generally exempt from resource extraction payments disclosure. However, this exemption is limited to companies not subject to resource extraction payments disclosure requirements of an alternative reporting regime that has been deemed by the SEC to require disclosure that satisfies the transparency objectives of Section 13(q).
- **Exemption 4 – “Case by Case”:** Registrants may submit a written request for an exemption on a case-by-case basis describing the particular payment disclosures the registrant seeks to omit and the specific facts and circumstances that warrant an exemption, including the particular costs and burdens it faces if it discloses the information.

For more information on the resource extraction payment final rules, see our alert memo, [available here](#).

C. Insider Trading Arrangements

On December 14, 2022, the SEC adopted amendments to Exchange Act Rule 10b5-1.²⁷ This rule provides affirmative defenses to trading on the basis of material nonpublic information in insider trading cases. 10b5-1 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 became aware of material nonpublic information. The amendments will “add new conditions to this rule that are designed to address concerns about abuse of the rule to trade securities opportunistically on the basis of material nonpublic information in ways that harm investors and undermine the integrity of the securities markets.”²⁸

The amendments are generally expected to apply to the 20-F for YE2024,²⁹ and include:

- **Disclosure Regarding Insider Trading Policy (Item 16.J)**: Pursuant to new Item 16.J, “registrants will be required to disclose whether they have adopted insider trading policies and procedures governing the purchase, sale, and other dispositions of their securities by directors, officers, and employees, or the registrant itself that are reasonably designed to promote compliance with insider trading laws, rules, and regulations, and any listing standards applicable to the registrant. If a registrant has not adopted such insider trading policies and procedures, it must explain why it has not done so.”³⁰ This information will need to be reported in XBRL.³¹
- **Insider Trading Policy (Exhibits)**: The amendments will require the registrant to also file a copy of its insider trading policies and procedures as an exhibit (noting that, if they are already in the filed ethics policy, that satisfies this requirement).³²
- **Cooling Off Period**: Beginning on February 27, 2023, the amendments will impose a cooling-off period on 10b5-1 plan trades for directors and officers that lasts until the later of (1) 90 days after the adoption of the contract, instruction or plan, or (2) two days after disclosure of financial results on Form 20-F or Form 6-K, but, in any event, the cooling off period is not longer than 120 days.³³ 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.

D. Climate Change

The SEC’s focus on climate disclosures has increased throughout 2022. On March 21, 2022, the SEC proposed rule amendments that would require registrants to include certain climate-related information in their Form 20-F.³⁴ After some technical concerns with the receipt of comments, the SEC is expected to adopt final rules in 2023.³⁵

The following are a sample of specific proposed rules, if adopted, that would have a direct impact on the 20-F:³⁶

- A new section titled “Climate-Related Disclosure,” which would include climate-related governance, risk, business impacts, targets and other related disclosures.
- Within the above section, disclosure of the registrant’s Scope 1,³⁷ Scope 2³⁸ and, if otherwise disclosed or material, Scope 3³⁹ greenhouse gas (GHG) emissions, together with an attestation report from an independent GHG emissions expert covering the Scope 1 and Scope 2 emissions disclosures.
- A new note to a registrant’s audited financial statements that provides climate-related metrics and impacts on a line-item basis.

For more information on the proposed climate rules, see our alert memos, [available here](#).

E. Cybersecurity

Cybersecurity has long been a focus of the SEC. On March 9, 2022, the SEC formalized this focus with proposed rules on cybersecurity disclosure.⁴⁰ However, no action has been taken on the proposed rules, and the current expectation is that final rules may be adopted in the first half of 2023.

The proposed rules would add Item 16.J to Form 20-F,⁴¹ which would require a registrant to:⁴²

- Describe its policies and procedures, if any, for the identification and management of risks from cybersecurity threats, including whether the registrant considers cybersecurity as part of its business strategy, financial planning and capital allocation.
- Disclose the board’s oversight of cybersecurity risk and management’s role and expertise in assessing and managing cybersecurity risk and implementing the registrant’s cybersecurity policies, procedures and strategies.
- Disclose whether any member of the registrant’s board of directors has expertise in cybersecurity, including the name(s) of any such director(s) and any detail necessary to fully describe the nature of the expertise.
- Disclose material changes or updates to previously disclosed cybersecurity incidents reportable on Form 6-K or 20-F, as applicable.
- Disclose when a series of undisclosed, individually immaterial cybersecurity incidents has become material in the aggregate.

For more information on the proposed cybersecurity rules, see our alert memo, [available here](#).

F. Share Repurchases

On December 15, 2021, the SEC issued proposed rules on share repurchase disclosure modernization.⁴³ These proposed rules apply to a registrant’s repurchases of its SEC-registered equity securities, or

“buybacks.” The SEC reopened the comment period for the proposed rules on share repurchase disclosure modernization on December 7, 2022 due to the interceding Inflation Reduction Act of 2022.⁴⁴ Thus, timing of final rules is uncertain.

The proposed rules, if adopted, would have the following effects:⁴⁵

- Introduce new Form SR, which would require information to be furnished to the SEC on the next business day after execution of a share repurchase.
- Amend existing Item 703 of Regulation S-K (and Item 16F of Form 20-F) to require disclosures on share repurchase policies and practices in periodic reports on issuer repurchases.
- Require information disclosed pursuant to Item 703 and Form SR to be reported in inline XBRL.

For more information on the proposed share repurchase disclosure modernization rules, see our alert memo, [available here](#).

III. Additional Considerations

The following is a list of issues that have drawn the attention of the SEC and that may have to be addressed under several items of the Annual Report, including risk factors, description of business, MD&A, legal proceedings, disclosure controls and procedures, internal control over financial reporting and the financial statements. These issues include: (A) the Russia and Ukraine conflict, (B) economic conditions, (C) COVID-19 disclosure, (D) sanctions, (E) human capital, (F) pay versus performance rules and (G) the Holding Foreign Companies Accountable (“HFCA”) Act.

A. Russia and Ukraine Conflict

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.⁴⁶ For registrants that may have disclosure obligations related to Russia’s invasion of Ukraine, the SEC recommends disclosure regarding the following topics:

- Direct or indirect exposure to Russia, Belarus or Ukraine through operations, employee base, investments in Russia, Belarus or Ukraine, securities traded in Russia, sanctions against Russian or Belarusian individuals or entities, or legal or regulatory uncertainty associated with operating in or exiting Russia or Belarus;
- Direct or indirect reliance on goods or services sourced in Russia or Ukraine or, in some cases, in countries supportive of Russia;
- Actual or potential disruptions in the company’s supply chain; and

- Business relationships, connections to or assets in Russia, Belarus or Ukraine.

The 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.⁴⁷ Registrants should also consider how the above topics affect management's evaluation of controls and procedures and the role of the board of directors in risk oversight.

B. Economic and Market Conditions

After a sustained period of low interest rates, interest rates rose drastically in 2022. There are expectations that interest rates will continue to rise in 2023 as the Federal Reserve seeks to combat inflation. The combination of rising interest rates and inflation has resulted in significant market volatility and economic uncertainty. Additionally, rising interest rates and inflation are likely to have a significant impact on financial reporting and business outlook. In preparing their Annual Reports, registrants should consider and disclose relevant risks related to high inflation and rising interest rates in sections related to risk factors, MD&A and financial statements.

C. COVID-19 Disclosure

In the last few years, businesses have grown comfortable with COVID-19 and pandemic-related risk factors and impacts on business and financial conditions. However, now that COVID-19 has become accepted as an ongoing risk, registrants should think carefully and adjust prior disclosures accordingly. Registrants should avoid generic language and instead focus on providing detailed disclosure on the specific facts and circumstances of the impact of COVID-19-related risks and effects on the company.

Some of the specific facts and circumstances identified by the SEC for consideration by registrants for inclusion in their COVID-19 disclosure include, among other things, how the company and management are responding to specific risks and effects related to COVID-19, any material operational challenges impacting the company, the overall liquidity position of the company, the ability of the company to access financing or other sources of funding, and the ability of the company to meet the covenants in its outstanding obligations and the ability of the company to service its existing obligations.⁴⁸

D. Iran Sanctions

While not directly noted in the Form 20-F, Exchange Act Section 13(r) imposes an obligation on registrants to report in their Form 20-F information regarding dealings with Iran and other sanctioned entities, 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.⁴⁹ 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 the last year.

E. Human Capital

The SEC last amended its human capital rules in 2020 to require the annual report of a domestic public company to include disclosure on human capital resources.⁵⁰ Although the requirement was not added to Form 20-F and therefore does not impact FPIs, it reflects the increased focus on the topic by the SEC and other observers. There has been recent speculation that the SEC will promulgate further rules in this area as it remains an area of significant focus. For example, Nasdaq’s Board Diversity Rules, which are discussed in more detail above in Part I.A, illustrate the heightened focus on human capital disclosure.

For more information on the human capital rules as applicable to domestic issuers, see our alert memo, [available here](#).

F. Pay Versus Performance Rules

In August 2022, the SEC adopted final rules implementing the pay versus performance requirement as required by Congress in the Dodd-Frank Act.⁵¹ The rules do not apply to FPIs, registered investment companies and emerging growth companies. The rules require all other reporting companies to disclose, in proxy or information statements in which executive compensation disclosure is required, how executive compensation actually paid by the registrants related to the financial performance of the registrants over the time horizon of the disclosure. While this rule does not apply to FPIs, registrants should keep in mind the SEC’s increased focus on executive compensation, and the likelihood this could affect investor and market expectations.

G. HFCA Act

Effective May 2021, the SEC added new Item 16I to Form 20-F to implement the Holding Foreign Companies Accountable Act (“HFCA Act”). This Item principally concerns Chinese auditors. However, as a practical matter, registrants will not need to respond to Item 16I in the Annual Report for YE2022. For more information regarding Item 16I and the implementation of the HFCA Act, see **Annex A** to this memorandum.

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Annex A – HFCA Act Implementation for Form 20-F Filers

- **Background:** The HFCA Act, signed into law on December 18, 2020, arose from the protracted standoff between the U.S. Public Company Accounting Oversight Board (“PCAOB”) – which is charged with inspecting the firms that audit financial statements of SEC-reporting companies – and authorities in China that prohibit China-based auditing firms from participating in PCAOB inspections or investigations.⁵²
- The HFCA Act focuses on public companies, i.e., those registered under Exchange Act, that retain auditors in a foreign jurisdiction that are not subject to inspection or investigation by the PCAOB because of positions taken by an authority in that foreign jurisdiction. (For simplicity, we will use the term “Problematic Jurisdiction” to refer to these jurisdictions and “Problematic Auditors” for auditors that the PCAOB is unable to inspect). The Act was targeted towards PCAOB challenges in China and Hong Kong.
- Under the HFCA Act, the SEC is required to identify each issuer that has retained a Problematic Auditor. An issuer that has been identified in this way is referred to as a Commission-Identified Issuer (“CII”).
- A CII will face two main consequences. First, under new Item 16I of Form 20-F, a CII will be subject to specific disclosure and submission requirements, as described below. Second, the Act requires the SEC to adopt rules prohibiting the trading of any securities of an issuer that has been a CII for three years; these rules have not yet been adopted. As discussed further below, the earliest year for complying with the additional disclosure requirements will be 2023, and the earliest possible date for trading suspensions pursuant to the HFCA Act will be in 2024, after issuers file their annual reports for 2023.
- **CII Status: Determination, Publication, Timing:** The process of identifying CIIs begins with the PCAOB, which must first identify Problematic Auditors. The SEC will use the PCAOB’s list of Problematic Auditors to designate CIIs after registrants file their annual reports. In making the determinations, the SEC will review the relevant annual report to determine if it was signed by a Problematic Auditor. Once the SEC identifies such a registrant, it will include the registrant’s name as “provisionally identified” on a list on the SEC’s website at <https://www.sec.gov/HFCAA>. The registrant will have a period of 15 business days to contact the SEC to say that it believes it has been incorrectly identified and present relevant evidence, which the SEC can use to decide if it should delete the registrant from the list. If the SEC does not agree with an objecting registrant, the determination will be conclusive.

Furthermore, if the registrant does not contact the SEC with objections within 15 business days of being so designated, the determination will be conclusive. “Conclusive” and “provisional” designations will be separately identified on the list, and the list will also indicate how many years an issuer has been so identified, which is relevant to the HFCA Act’s trading prohibitions discussed below.⁵³

- **Requirements of Item 16I(b) of Form 20-F:** The SEC amended Form 20-F to include Item 16I(b) as part of amendments to finalize interim rules implementing the submission and disclosure requirements of the HFCA Act. Effective January 10, 2022, a CII is subject to the following requirements:
 - *Supplemental Submission:* A CII must submit documentation that establishes that the registrant is not owned or controlled by a Problematic Jurisdiction. The supplemental submission must be provided through the EDGAR system on or before the due date for the Annual Report (April 30 for calendar-year end FPIs). This submission will be publicly available on EDGAR.
 - *Annual Report Disclosure Requirements:* A CII that is a foreign issuer (as defined in Rule 3b-4 of the Exchange Act) must disclose:
 - That a Problematic Auditor issued an audit report for the registrant for the immediately preceding annual financial statement period.
 - The percentage of shares of the registrant owned by governmental entities in the foreign jurisdiction in which the registrant is incorporated or otherwise organized.
 - Whether governmental entities in a Problematic Jurisdiction have a controlling financial interest in the registrant.
 - The name of each official of the Chinese Communist Party who is a member of the board of directors of the registrant or the operating entity with respect to the issuer.
 - Whether the articles of incorporation of the registrant or equivalent organizing document contains any charter of the Chinese Communist Party, including the text of such charter.

The disclosure must be included in the Annual Report filed for the year following CII designation. This means that the disclosure is required in that Annual Report even if the issuer has not used a Problematic Auditor for the audit report included in the Annual Report it is then filing.

- **Process for Trading Prohibitions:** The HFCA Act requires the SEC to prohibit trading on any U.S. exchange or other trading method subject to SEC regulation (including the OTC markets), the securities of any Exchange Act-registered issuer that has been determined to be a CII for three consecutive years. Once the SEC identifies a CII for three consecutive years, it will issue an order for a trading prohibition on the securities of that issuer, which will be effective on the fourth business day after the order is published by the SEC. The earliest date when these orders will be issuable will be in 2024, after registrants file their annual reports for 2023 (assuming a registrant has been a CII for each of 2021, 2022 and 2023).⁵⁴
- **Statement of Protocol:** On August 26, 2022, the PCAOB signed a Statement of Protocol with the China Securities Regulatory Commission and the Ministry of Finance of the People's Republic of China governing inspections and investigations of audit firms based in China and

Hong Kong.⁵⁵ The agreement establishes a specific and accountable framework for the PCAOB to conduct inspections and investigations of PCAOB-registered public accounting firms in China and Hong Kong, and thus avoids the repercussions set forth in the HFCAA.

Furthermore, on December 15, 2022, the PCAOB announced that it was able to inspect and investigate completely issuer audit engagements of PCAOB-registered public accounting firms headquartered in China and Hong Kong.⁵⁶ The continued compliance with the Statement of Protocol could result in roughly 200 China-based registrants avoiding trading prohibitions in the U.S.

¹ Nasdaq Stock Market LLC Rules, Rule 5605(f) Diverse Board Representation, available at <https://www.sec.gov/rules/sro/nasdaq/2020/34-90574-ex5.pdf>.

² *Id.* at p. 2.

³ “Home country” refers to the jurisdiction in which the company is legally organized, incorporated or established and, if different, the jurisdiction where it has its principal listing. General Instruction F of Form 20-F.

⁴ Nasdaq Stock Market LLC Rules, Rule 5605(f) Diverse Board Representation at p. 2.

⁵ *Id.*

⁶ Nasdaq Board Diversity Matrix, available at https://listingcenter.nasdaq.com/Show_Doc.aspx?File=Foreign_Board%20Diversity%20Matrix%20Disclosure%20Template_Fillable.pdf.

⁷ Nasdaq Board Diversity Rule (last updated February 18, 2022), available at <https://listingcenter.nasdaq.com/assets/Board%20Diversity%20Disclosure%20Five%20Things.pdf>. For companies listed on or after August 6, 2021, transition periods are available at <https://listingcenter.nasdaq.com/assets/New%20Companies%20Listing%20on%20Nasdaq.pdf>.

⁸ This requirement became effective on August 8, 2022.

⁹ This requirement becomes effective on August 7, 2023.

¹⁰ This requirement becomes effective on August 6, 2025.

¹¹ This requirement becomes effective on August 6, 2026.

¹² Updating EDGAR Filing Requirements and Form 144 Filings, Release Nos. 33-11070; 34-95025 (June 2, 2022), available at <https://www.sec.gov/rules/final/2022/33-11070.pdf>.

¹³ *Id.* at p. 18.

¹⁴ *Id.* at p. 51.

¹⁵ Listing Standards for Recovery of Erroneously Awarded Compensation, Release Nos. 33-11126; 34-96159; IC-34732; (October 26, 2022), available at <https://www.sec.gov/rules/final/2022/33-11126.pdf>.

¹⁶ The compensation recovery rules require listing exchanges to adopt clawback standards that go into effect no later than November 28, 2023 (one year after the SEC published the final clawback rule in the Federal Register), with registrants required to implement policies within 60 days thereafter. Disclosures are required following a adoption of the compensation recovery policy. *Id.*

¹⁷ *Id.* at p. 113.

¹⁸ *Id.* at p. 108.

¹⁹ *Id.* at p. 10.

²⁰ *Id.* at p. 121.

²¹ *Id.*

²² Disclosure of Payments by Resource Extraction Issuers, Release No. 34-90679 (December 16, 2020), available at <https://www.sec.gov/rules/final/2020/34-90679.pdf>.

²³ *Id.* at p. 148.

²⁴ *Id.* at p. 1-7.

²⁵ “Smaller reporting companies” includes registrants with a public float of less than \$250 million, as well as registrants with an annual revenues of less than \$100 million for the previous year and either no public float or a public float of less than \$700 million. 17 CFR § 240.12b-2.

²⁶ “Emerging growth companies” includes registrants that had total annual gross revenues of less than \$1.07 billion during its most recently completed fiscal year, and, as of December 8, 2011, had not sold common equity securities under a registration statement. 17 CFR § 240.12b-2.

²⁷ Insider Trading Arrangements and Related Disclosures, Release Nos. 33-11138; 34-96492 (December 14, 2022), available at <https://www.sec.gov/rules/final/2022/33-11138.pdf>.

²⁸ *Id.* at p. 1.

²⁹ The amendments apply to the first filing that covers the first full fiscal period that begins after April 1, 2023. *Id.* at p. 107. The amendments defer by six months the date of compliance with the additional disclosure requirements for smaller reporting companies. Press Release: SEC Adopts Amendments to Modernize Rule 10b5-1 Insider Trading Plans and Related Disclosures (December 14, 2022), available at <https://www.sec.gov/news/press-release/2022-222>.

³⁰ Insider Trading Arrangements and Related Disclosures at 84, 249-250.

³¹ *Id.* at p. 220, § 232.405(b)(4)(iii).

³² *Id.* at p. 249-250.

³³ *Id.* at § 240.10b5-1(c)(1)(ii)(B)(1).

³⁴ The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042; 34-94478 (March 21, 2022), available at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

³⁵ Press Release: SEC Extends Comment Period for Proposed Rules on Climate-Related Disclosures, Reopens Comment Periods for Proposed Rules Regarding Private Fund Advisers and Regulation ATS (May 9, 2022), available at <https://www.sec.gov/news/press-release/2022-82>.

³⁶ The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042; 34-94478 (March 21, 2022), at p. 42-43.

³⁷ “Scope 1 emissions” are direct GHG emissions from operations that are owned or controlled by the registrant. These might include emissions from registrant-owned or controlled machinery, vehicles or operations. *Id.* at p. 39.

³⁸ “Scope 2 emissions” are indirect GHG emissions primarily resulting from the generation of energy purchased and consumed by the registrant. These emissions include purchased or acquired electricity, steam, heat, or cooling

that is consumed by operations owned or controlled by a registrant. *Id.*

³⁹ “Scope 3 emissions” are all indirect GHG emissions not otherwise included in a registrant’s Scope 2 emissions, which occur in the upstream and downstream activities of a registrant’s value chain. These emissions are a consequence of the registrant’s activities but are generated from sources that are neither owned nor controlled by the registrant. These might include emissions associated with the production and transportation of goods a registrant purchases from third parties, employee commuting or business travel, and the processing or use of the registrant’s products by third parties. *Id.* at p. 39-40.

⁴⁰ Cybersecurity Risk Management, Strategy, Governance and Incident Disclosure, Release Nos. 33-11038; 34-94382 (March 9, 2022), a available at <https://www.sec.gov/rules/proposed/2022/33-11038.pdf>.

⁴¹ Notably, both the 10b5-1 proposed rules and the cybersecurity proposed rules purport to add Item 16.J. *Id.*; Insider Trading Arrangements and Related Disclosures, Release Nos. 33-11138; 34-96492.

⁴² Cybersecurity Risk Management, Strategy, Governance and Incident Disclosure, Release Nos. 33-11038; 34-94382 (March 9, 2022), at p. 48-49.

⁴³ Share Repurchase Disclosure Modernization, Release Nos. 34-93783 (December 15, 2021), a available at <https://www.sec.gov/rules/proposed/2021/34-93783.pdf>.

⁴⁴ Press Release: SEC Reopens Comment Period for Proposed Rule on Share Repurchase Disclosure Modernization (December 7, 2022), a available at <https://www.sec.gov/news/press-release/2022-216>.

⁴⁵ Share Repurchase Disclosure Modernization, Release Nos. 34-93783 (December 15, 2021), at p. 22.

⁴⁶ Sample Letter to Companies Regarding Disclosures Pertaining to Russia’s Invasion of Ukraine and Related Supply Chain Issues (Modified May 3, 2022), a available at

<https://www.sec.gov/corpfin/sample-letter-companies-pertaining-to-ukraine>.

⁴⁷ *Id.*

⁴⁸ Coronavirus (COVID-19) – Disclosure Considerations Regarding Operations, Liquidity, and Capital Resources (June 23, 2020), a available at

<https://www.sec.gov/corpfin/covid-19-disclosure-considerations>.

⁴⁹ 15 U.S.C. § 78m.

⁵⁰ Modernization of Regulation S-K Items 101, 103 and 105, Release Nos. 33-10825; 34-89670 (August 26, 2022), a available at <https://www.sec.gov/rules/final/2020/33-10825.pdf>.

⁵¹ Pay Versus Performance, Release Nos. 34-95607 (August 25, 2022), a available at

<https://www.sec.gov/rules/final/2022/34-95607.pdf>.

⁵² Final text a available at

<https://www.govinfo.gov/content/pkg/COMPS-15889/pdf/COMPS-15889.pdf>.

⁵³ Holding Foreign Companies Accountable Act Disclosure, Release No. 34-93701 (December 2, 2021), a available at <https://www.sec.gov/rules/final/2021/34-93701.pdf>.

⁵⁴ The HFCA Act Disclosure Release outlines the procedures for terminating trading prohibitions, which can be done if a registrant certifies to the SEC that it has retained an auditor that the PCAOB has inspected to the satisfaction of the SEC, which will only be issued after the SEC and investors have access to an audit report signed by an auditor that is not a Problematic Auditor.

⁵⁵ Fact Sheet—PCAOB Agreement with China on Audit Inspections and Investigations, (August 26, 2022), a available at <https://www.sec.gov/files/china-sop-fact-sheet.pdf>.

⁵⁶ Statement on PCAOB’s Determinations Regarding Public Accounting Firms in China, Chair Gary Gensler (December 15, 2022), a available at

<https://www.sec.gov/news/statement/gensler-determination-statement-20221215>.