ALERT MEMORANDUM

Preparing an Annual Report on Form 20-F – Guide for 2026

December 17, 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" or the "Commission"). This alert memorandum summarizes considerations that will affect the preparation of the annual report on Form 20-F for the year ending on December 31, 2025 (the "2025 20-F") and certain other developments pertinent to FPIs.

Part I of this memorandum describes shifts in SEC regulatory and enforcement policy under the second Trump administration. Part II 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. Part III addresses additional developments affecting FPIs.

This memorandum 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. SEC Policy Shifts Under the Second Trump Administration

While the substantive disclosure requirements of Form 20-F remain largely unchanged, several recent developments at the SEC should inform registrants' approach to preparing the 2025 20-F.

Recent SEC leadership changes signal a more business-friendly posture at the agency, combining (i) a deregulatory agenda, (ii) enforcement targeting traditional harms such as fraud, insider trading and accounting violations, and (iii) a materiality standard refocused on what the Commission believes is important to investors – financial materiality.

Meanwhile, aligned with the Trump administration's "America First" policy, the SEC has a renewed focus on ensuring that FPIs do not receive preferential regulatory treatment over domestic issuers. This means that, despite the Commission's largely deregulatory agenda, FPIs may nevertheless face closer scrutiny and stricter disclosure obligations over time.

A. Leadership Changes and Embrace of a Business-Friendly Regulation

Leadership Transition. The SEC is now operating under new leadership comprised of a Republican majority and at reduced staffing levels. The Commission leadership has emphasized its commitment to innovation, efficient capital formation and streamlined compliance processes.[1]

"New Day" Regulatory Priorities. In what Chairman Paul S. Atkins refers to as a "new day" at the SEC,[2] the Commission has withdrawn or abandoned certain disclosure-focused proposals, including rules on corporate board diversity, human capital management, and cybersecurity risk management. New rulemaking proposals expected for 2026 address (i) crypto assets, (ii) expanded accommodations for Emerging Growth Companies, (iii) simplification of filer status categories, (iv) broadening of Rule 144 safe harbors, and (v) modernization of shelf registration. The Spring 2025 Regulatory Agenda also included consideration of possible changes to the FPI definition, as further discussed in Part III. Additionally, Chairman Atkins has endorsed President Trump's proposal to shift domestic issuers' mandatory reporting requirement from a quarterly to a semi-annual basis, indicating that the SEC expects to introduce a rulemaking proposal for comment in early 2026.

Refocused Materiality Standard. Under Chairman Atkins, the SEC has refocused disclosure requirements around traditional materiality principles — in other words, what a reasonable investor would consider important to making an investment decision. Chairman Atkins has stated that "[r]ules written for shareholders who seek to effect social change or have motives unrelated to maximizing the financial return on their investment fail this test."[3] With this shift, registrants preparing their 2025 20-F may want to refocus their consideration of what is material on matters that impact financial returns, and consider whether any discussion of social policy or environmental, social, and governance ("ESG") narratives is grounded in financial materiality.

B. Renewed Focus on Traditional Enforcement

SEC Enforcement Shift. The SEC's leadership has signaled a shift toward traditional notice-and-comment rulemaking and away from regulation-by-enforcement.[4] This may include extended comment periods, more rigorous cost-benefit analysis, and an assessment of cumulative regulatory burdens, changes that may presage a more measured approach to disclosure requirements. At the same time, recent Commission and staff practices indicate that informal mechanisms — such as staff statements, interpretive guidance and no-action positions — may also continue to shape market expectations.

Decline in SEC Staff Comment Letter Activity. The total volume of SEC staff comment letters on periodic filings declined in the 12 months ended September 30, 2025, breaking a two-year trend of elevated comment activity.[5]

Renewed Enforcement Priorities. Enforcement is focused on "retail" violations, including accounting and internal controls violations, fraud and insider trading. The SEC has been clearing its docket of matters that do not align with its current priorities,

particularly in the crypto space, while building capacity in other areas. For example, the newly created Cyber and Emerging Technologies Unit ("CETU") will investigate cyber intrusions at public companies, particularly those involving harm to customers or investors.

Centralization of Enforcement Authority. The SEC has consolidated enforcement decision-making in Washington D.C., suggesting that enforcement matters will more closely track leadership priorities going forward.[6]

C. A "Robust, but Level Playing Field" Between FPIs and Domestic Issuers

Since the 1980s, the SEC has maintained a bifurcated regulatory framework, applying somewhat less stringent reporting requirements to FPIs than domestic issuers across multiple areas, including internal controls, executive compensation disclosure, periodic reporting, proxy rules and insider reporting.

In recent years, however, the SEC has gradually taken a more uniform regulatory approach for FPIs and domestic issuers.

— Several recent rulemakings illustrate this trend. For example, (i) the October 2022 rules related to compensation recovery (the "clawback rules"), (ii) certain elements of the December 2022 amendments to Rule 10b5-1 and the addition of insider trading policy disclosures in annual reports, (iii) the 2023 cybersecurity annual report disclosure rules, and (iv) the abandoned climate rules all apply (or would have applied) equally to FPIs and domestic issuers. This trend toward regulatory parity extends to recently passed legislation: the Holding Foreign Insiders Accountable Act, discussed in more detail in Part III of this memorandum, passed Congress on December 17, 2025, and is expected to be signed imminently by President Trump. The Act would eliminate FPIs' current exemption from Section 16(a) insider reporting requirements for directors and officers.

— The SEC also issued a Concept Release in June 2025 soliciting public comment on potential reforms to narrow the FPI definition (the "Concept Release"). In connection with the Concept Release, which is further discussed in Part III of this memorandum, the Commission leadership has emphasized the importance of maintaining "a robust, but level playing field" and treating domestic and foreign issuers equally.[7]

II. Disclosure Trends and General Considerations

This section reviews disclosure topics that have recently drawn SEC attention, or are likely to do so, and should be considered in the preparation of the 2025 20-F. These issues include: (A) the clawback rules, (B) diversity, equity and inclusion disclosures, (C) climate-related disclosures, (D) artificial intelligence, (E) cybersecurity, (F) cryptocurrencies, (G) monetary policy and market conditions, (H) tariffs, (I) China-related disclosures, (J) armed conflicts and security concerns, (K) designation of foreign terrorist organizations, (L) XBRL tagging, and (M) general disclosure considerations.

A. Clawback Rules

In 2022, the SEC adopted the clawback rules and the listing exchanges created listing standards that require registrants to (i) adopt a "clawback policy" to recover incentive-based compensation from current and former executive officers in the event of a restatement, (ii) file the policy as an exhibit to their annual report, and (iii) include disclosures related to the policy and a recovery analysis where a recovery of incentive-based compensation is triggered. The clawback rules have been in force since 2024.

New SEC Guidance. C&DIs released on April 11, 2025 include clarifications that should inform registrants preparing their 2025 20-F:

— C&DI 104.20. To determine whether a change to previously issued financial statements amounts to a correction of an error such that the requirement to check the applicable box on the cover page of

the 2025 20-F is triggered, registrants should look to generally accepted accounting principles applicable to their financial statements.

- Both "Big R" and "little r" restatements fall under this category and would require checking the box.
- However, routine out-of-period adjustments, meaning immaterial errors booked in the current year, without needing to revise prior financial statements, would not require checking the box.

— C&DI 104.21. **Even if no clawback of compensation was necessary**, if an error correction in financial statements triggered the requisite analysis under the registrant's policy, **registrants must still check the applicable box on the cover page of the 2025 20-F *and* briefly disclose why no clawback was necessary**.

- **Practice Tip:** Registrants should briefly explain in Item 6F the circumstances that triggered the recovery analysis and why no compensation recovery was required.
- Such explanations could include, for example, that the restatement did not affect metrics used in determining or awarding compensation or that no incentive compensation was granted during the applicable period.
- Simply stating that no clawback was required is not sufficient and may prompt an SEC comment.

— C&DI 104.22 and C&DI 104.23. If a prior-year restatement has been reported in previous filings, registrants need not again check the relevant box in the 2025 20-F.

— C&DI 104.25. If restatements only impact interim financial periods, and annual financial statements are unaffected, registrants need not check the relevant box on the cover page, but should include Item 6F disclosure explaining the recovery analysis.

Practice Tip: If any changes to the registrant's recovery policy have taken effect in the past year, registrants are required to file the updated policy as an exhibit to the 2025 20-F.

For more information on the clawback rules, see our alert memo, available here.

B. Diversity, Equity and Inclusion Disclosures

The Trump administration has signaled aggressive enforcement of federal anti-discrimination laws against private sector diversity, equity, and inclusion ("DEI") programs. In light of recent Executive Orders ("EOs") and other administration and agency actions, discussed in greater detail in our alert memo, available here, registrants should carefully review their human capital disclosures, particularly those related to DEI and ESG initiatives.

— On July 29, 2025, the Attorney General issued guidance stating that using race, sex or other protected characteristics for employment, program participation, and resource allocation is unlawful except in rare cases. The memorandum includes "best practices," such as focusing on skills and qualifications, prohibiting demographic-driven criteria, eliminating diversity quotas, and avoiding "exclusionary" training programs. Although directed to federal funding recipients, this guidance is helpful for all registrants when evaluating their human capital programs and related disclosures.

- **Practice Tip:** When preparing the 2025 20-F, registrants should evaluate recruiting and retention programs, employee evaluations, compensation metrics used for senior executives, disclosures addressing director qualifications and skills, and supplier programs in light of the Trump administration's guidance. Registrants should also review their governance documents and other public

disclosures (including website disclosures) to ensure consistency across materials.

— **SEC Enforcement.** The Trump administration's targeting of DEI initiatives has spurred quick changes in public companies' disclosure practices.

- S&P 500 companies have significantly reduced references to DEI in their domestic annual 10-K filings, with last year marking the fewest DEI references since 2020. Some companies deleted any references to DEI, while others emphasized inclusivity and diversity of perspective.

- **Practice Tip:**

  - FPIs must navigate reconciling new requirements in the United States with obligations in their home countries, in addition to internal commitments and investor expectations.

  - Engaging with counsel to conduct a privileged review of human capital programs, policies, communications, data and compensation arrangements can help assess potential compliance risks under federal anti-discrimination laws, ensure the Board of Directors is appropriately briefed in a privileged manner on these risks, including risks unique to registrants that are federal contractors under the False Claims Act ("FCA") (as further discussed in Part III of this memorandum), and improve the completeness and accuracy of related disclosures.

— **Nasdaq Rules.** Registrants are reminded that they no longer need to comply with Nasdaq's board diversity rules, which were repealed in February 2025 following a federal court's vacatur. As a result, many registrants are now omitting the previously required board diversity matrix, though some registrants have chosen to include a few lines of narrative diversity disclosure discussing aggregated board diversity statistics instead. Registrants should review and revise disclosure as needed, while taking into account investor preferences.

— Contact your Cleary team with any questions.

C. Climate-Related Disclosures

For the 2025 20-F, climate-related disclosure requirements remain unchanged. While the SEC's 2024 climate-related reporting rule is stayed and inapplicable, registrants should consider investor expectations and regulatory requirements in other jurisdictions in which they operate.

— **Jurisdictional Considerations.** FPIs may be subject to home country climate disclosure requirements that diverge from U.S. standards. Except where such information is material to the registrant or necessary to prevent any statement in the 2025 20-F from being materially misleading, information not specifically required under Form 20-F need not be included in the filing. However, registrants excluding home country climate disclosures from their 2025 20-F filings should be prepared to justify their omission based on immateriality.

- **CSRD.** The EU's Corporate Sustainability Reporting Directive ("CSRD") applies a "double materiality" standard that diverges from the SEC's investor-focused approach. The European Commission is pursuing simplification measures, including targeted relief for the 2025-2026 reporting periods and deferred timelines for certain companies. Work on dedicated standards for non-EU companies has been paused pending completion of this initiative.

- **ISSB/IFRS**. IFRS S1 and IFRS S2 have been adopted or are under active consideration in numerous jurisdictions across Africa, Asia, South America and Australia. The ISSB proposed amendments to IFRS S2 in April

2025 to ease implementation challenges and is aiming to finalize them by year-end 2025.

- **California Rules**. California has enacted two climate disclosure statutes, the Climate Corporate Data Accountability Act and the Climate-Related Financial Risk Act, that apply to entities formed in the United States, including U.S.-formed subsidiaries of non-U.S. parent companies, that satisfy specified revenue thresholds and conduct business in California. For more information, please see our alert memoranda describing compliance requirements under SB 261 and SB 253.

- **Continue Monitoring:**

  - New State Activity: Climate disclosure bills continue to be filed in various other states (including New York, New Jersey, Illinois, and Colorado), requiring continuous monitoring of legislative developments and assessment of potential compliance implications.

  - Executive Order (April 2025): An EO by President Trump directs the Department of Justice ("DOJ") to challenge state climate laws as potentially unconstitutional or preempted. It is safest for registrants to continue to prepare for these disclosures, while continuing to monitor for regulatory bars on implementation.

D. Artificial Intelligence

While the SEC under the second Trump administration has not yet promulgated rules or issued formal guidance addressing artificial intelligence ("AI"), the Commission has articulated its approach to AI as one that seeks to balance encouraging innovation with protecting investors.[8] The SEC is expected to apply its existing regulatory framework to AI-related matters, requiring disclosure of AI-related information where it would be material to a reasonable investor's investment decision.

— **Scrutiny of AI Washing.** While the SEC is retreating from the type of aggressive enforcement that characterized the SEC under former Chairman Gary Gensler, registrants should continue being cautious about AI washing or making exaggerated or false claims about their use of AI.

  - Statements on the AI capabilities of the registrant should be substantiated and accurate, not generic or aspirational. They should provide specific information explaining how AI functions within the registrant's business, including (i) their use of AI tools, (ii) implementation and governance structures, (iii) data sources, and (iv) material risk factors (such as AI's "black box" nature, potential overreliance, cybersecurity vulnerabilities, workforce impacts, and liability potentially stemming from company-generated AI output).

— Recently, the SEC's Investor Advisory Committee ("IAC") drafted recommendations to the SEC for AI-related disclosures that should be required of registrants. These include requiring registrants to (i) provide a definition of the term AI, (ii) disclose relevant board oversight mechanisms, and (iii) report on how they are deploying AI and any material effects of doing so, both on their business operations and consumer-facing matters. However, certain SEC Commissioners have suggested that the SEC is unlikely to adopt rulemaking in line with these recommendations, as it looks to move away from topic-specific rulemaking in favor of principles-based disclosure requirements to elicit disclosure if material. Nonetheless, the IAC recommendations are indicative of the types of AI-related disclosures that investors are currently seeking from registrants.

— Even if AI or machine learning is not a significant aspect of a registrant's business, its assets or operations may still be impacted in a way that may expose the business to some material risk.

— As with other developing disclosure areas, registrants should review peers' disclosures and ensure that they are generally in line with industry practices.

E. Cybersecurity

— Cybersecurity is expected to remain an area of interest for SEC staff reviews. For one, the newly created CETU is mandated to monitor regulated entities' compliance with cybersecurity rules and regulations.[9]

— This underscores the importance of robust cybersecurity practices, including crisis management protocols and accurate, timely incident reporting. Refer to the Cleary Crisis Management Handbook.

— Recent SEC comment letters have also shown an interest in registrants' disclosures regarding their cybersecurity risk management systems, particularly the relevant expertise of senior management responsible for overseeing the company's cybersecurity risk management. Registrants are advised to:

- Avoid characterizing realized cybersecurity incidents as hypothetical risks. The SEC has issued comment letters and brought enforcement actions against companies that described actual intrusions or breaches in speculative terms, rather than disclosing them as events that occurred.
- The rules require disclosure of cybersecurity risk management processes, board oversight responsibilities, and management's role in identifying and managing cybersecurity risks.
- When drafting risk factors, compare against industry peers and consider third party and supply chain concerns.
- Consider the 2023 cybersecurity disclosure rules, which continue to be in place. These rules enhance and standardize disclosure requirements related to cybersecurity incident reporting, along with cybersecurity risk management, strategy and governance.
    - For further discussion of the rules and related disclosure requirements, see our memo Preparing an Annual Report on Form 20-F – Guide for 2025, available here.

F. Cryptocurrencies

The SEC has signaled a marked shift in its approach to crypto asset regulation, moving away from enforcement-driven oversight toward a framework designed to improve regulatory clarity.[10] This recalibration may provide greater regulatory certainty for FPIs with crypto-related operations or holdings.

— **Crypto Task Force.** In January 2025, the SEC established a Crypto Task Force to develop a comprehensive regulatory framework.[11] The task force is conducting roundtables on classifying crypto assets, tailoring regulation for trading platforms, addressing custody considerations and tokenizing assets. The Spring 2025 Regulatory Agenda contemplates related rule proposals.

— **Accounting Treatment.** On January 30, 2025, the SEC replaced Staff Accounting Bulletin ("SAB") 121 (which required the fair value of the crypto assets being safeguarded to be recorded as a liability) with SAB 122, modifying the accounting treatment for entities safeguarding cryptocurrency.

— **Disclosure Guidance.** On April 10, 2025, the Division of Corporation Finance issued guidance clarifying disclosure expectations for crypto asset offerings. While not directly applicable to periodic reporting, the guidance may inform the Division's approach to 2025 20-F disclosures and signals evolving expectations for tailored risk factors and clear business descriptions.

— **Additional Guidance.** The SEC has issued targeted statements on stablecoins,[12] protocol staking,[13] meme coins,[14] liquid staking,[15] crypto

asset exchange-traded products,[16] and proof-of-work mining.[17] The GENIUS Act, enacted on July 18, 2025, also establishes federal banking agency oversight for stablecoins.

— **Withdrawn Guidance.** On May 6, 2025, the Division withdrew its Sample Letter to Companies Regarding Recent Developments in Crypto Asset Markets, a move consistent with its shift away from "regulation-by-enforcement."

G. Monetary Policy and Market Conditions

The 2025 economic environment was characterized by relatively elevated inflation, restrictive monetary policy, sweeping tariff measures and market volatility. Registrants should address disclosure obligations related to these economic shifts.

— **Inflation and Restrictive Monetary Policy.** Heading into 2026, inflation remains elevated despite recent improvements. Although the Federal Reserve recently cut interest rates, monetary policy remains restrictive against a backdrop of a slowing job market and the uncertainty brought on by the recent shutdown of the U.S. government.

— **Market Volatility and Tariff-Driven Disruptions.** Meanwhile, the U.S. stock market experienced high volatility in early 2025, driven primarily by tariff policy shifts. A sharp decline followed tariff announcements in April 2025, though markets gradually stabilized thereafter. In the latter half of the year, major indexes have continued a general upward trend, although with some volatility stemming from concerns over Federal Reserve policy, the U.S. government shutdown and developments in the AI landscape.

H. Tariffs

Since President Trump began his second term, the U.S. government has imposed sweeping tariff measures affecting multiple sectors and trading partners, including reciprocal tariffs, sector-specific duties, and targeted measures on particular industries and products. See our alert memo, available here.

— **The tariff landscape remains fluid.**

- New measures continue to emerge, exemptions are granted on a rolling basis and trade negotiations are ongoing.
- On November 5, 2025, the Supreme Court heard oral arguments in *Learning Resources, Inc. v. Trump*, which challenges the President's authority to impose reciprocal tariffs under the International Emergency Economic Powers Act. A decision is pending as of the date of this memorandum.

— **Registrants should disclose material tariff-related impacts from the past fiscal year and address forward-looking risks, including as to the uncertainty of the evolving landscape.**

- This may include disclosure of (i) exposure to tariff-affected jurisdictions and supply chains, (ii) known trends or uncertainties reasonably likely to materially impact financial condition and results of operations, with quantified impacts where practicable, (iii) tariff-related sensitivity in critical accounting estimates, (iv) board oversight of tariff-related risks, and (v) any effects on disclosure controls and internal control over financial reporting.
- Disclosures should quantify significant impacts where reasonably estimable, provide meaningful context about how tariffs interact with the company's business model, and include appropriately hedged forward-looking analysis.
- Given variations in exposure across industries and geographies, disclosures should be timely and tailored to sector-specific risks.

I. China-Related Disclosures

The regulatory environment for China-based and China-exposed issuers is intensifying amid heightened geopolitical tensions and the SEC's stated concerns over investor protection. Recently, China-based issuers have received comments requiring detailed disclosures regarding potential People's Republic of China ("PRC") government intervention, Variable Interest Entity ("VIE") structures, and permissions required from Chinese authorities to operate and offer securities to foreign investors.

Companies with operations in or exposure to China should evaluate recent policy initiatives, SEC enforcement actions and proposed exchange rules.

— **"America First" Policy.** The Trump administration's "America First Investment Policy" signals heightened scrutiny of Chinese companies accessing U.S. capital markets. The policy directs federal agencies to assess risks posed by "foreign adversary" companies listed on domestic exchanges and affirms continued enforcement of financial auditing standards under the Holding Foreign Companies Accountable Act ("HFCAA"). It also mandates interagency coordination on investor protection measures.

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

  - Pursuant to this directive, the SEC has established the Cross-Border Fraud Task Force examining potential securities law violations.

— **SEC Focus on VIE Structures.** The Concept Release focuses substantial attention on VIE structures used to circumvent Chinese foreign ownership restrictions,[18] discussing concerns around enforcement difficulties, potential government intervention and equity holder vulnerabilities.

— **Enhanced Disclosure Expectations and Enforcement.** FPIs with operations in China should refine their disclosures consistent with the Division of Corporation Finance's July 17, 2023 sample comment letter. See our memo Preparing an Annual Report on Form 20-F – Guide for 2024, available here.

  - The SEC staff has enforced these expectations through comment letters addressing PRC government intervention, requisite permissions and approvals, cash flow restrictions, and legal enforcement uncertainties.

— **Proposed Nasdaq Listing Standard Changes.** On September 4, 2025, Nasdaq proposed new initial listing criteria for companies operating in China, Hong Kong, and Macau, including a $25 million minimum public offering requirement and a $15 million minimum public float. The SEC must approve, disapprove, or institute proceedings on this proposal by December 18, 2025.[19]

J. Armed Conflicts and Security Concerns

— **Continue Evaluating Disclosure Obligations Arising from Ongoing International Conflicts.**

  - These include the Russia-Ukraine war and the evolving sanctions regime, the multi-front Middle East conflict (Gaza, West Bank, and Lebanon), and the potential escalation of U.S.-Venezuela relations stemming from increased U.S. military presence and activity in the Caribbean.

  - Registrants should disclose exposure to conflict zones — through operations, personnel, investments, or reliance on goods and services from affected regions, for example — and address real or potential disruptions to the supply chain and business relationships in conflict areas or neighboring countries. Even absent direct exposure, issuers should assess whether indirect impacts warrant disclosure,

and update risk factors and forward-looking statements accordingly.

- To the extent material, financial statements should reflect conflict-related impacts through appropriate adjustments to asset valuations, revenue recognition and other line items. Management should evaluate whether these developments affect internal controls, and boards should consider risk oversight implications. For further discussion of disclosures dealing with ongoing armed conflicts, see our memo Preparing an Annual Report on Form 20-F – Guide for 2025, available here.

— **Consider Risks to the Business Stemming from Security Challenges.**

- The SEC has commented on risk disclosures for operations in jurisdictions facing security challenges. Issuers operating in such regions should provide specific, tailored disclosures, rather than generic risk factor language, and quantify exposure where possible.

K. Designation of Foreign Terrorist Organizations

— **The Trump Administration's Executive Actions.** In early 2025, an EO from President Trump and subsequent memoranda from the DOJ signaled an anticipated crackdown on international cartels, transnational criminal organizations and those who provide material support to such entities.

— **Foreign Terrorist Organization Designations for Cartels.** As a result, the Department of State designated eight Latin American drug cartels and gangs as Foreign Terrorist Organizations ("FTOs") and Specially Designated Global Terrorists ("SDGTs"), with additional entities designated subsequently.

- Accordingly, companies and individuals with business operations in Latin America and other regions in which cartels operate should assess their risks in connection with this emerging legal regime.

- In addition to mitigating exposure, registrants preparing the 2025 20-F should consider necessary updates to disclosure stemming from such risks, including in risk factors and MD&A.

— For additional information, see our alert memo, available here, and reach out to your Cleary team with any questions.

L. XBRL Common Tagging Mistakes

As a reminder, registrants preparing their 2025 20-F must comply with Inline XBRL tagging requirements and adhere to the EDGAR Filer Manual format requirements. The SEC continues to enforce standards through comment letters addressing tagging deficiencies.

To avoid common compliance pitfalls, registrants should consult the SEC's XBRL Semi-Annual Report, "Regarding Public and Internal Use of Machine-Readable Data for Corporate Disclosures." The report reminds registrants that the following items should be tagged in Inline XBRL:

— Cover page information

— Item 6F disclosure (registrant's actions to recover erroneously awarded compensation)

— Item 16J disclosure (insider trading policies)

— Item 16K disclosure (registrant's cybersecurity risk management, strategy, and governance)

— Financial statements

— Information (including PCAOB ID Numbers) about the auditors who have provided opinions

related to the presented financial statements and the location where the auditor's report was issued

M. General Disclosure Considerations

Despite a decline in comment letter activity in recent months, statements by SEC leadership and staff comment letters issued over the past year reveal areas of consistent regulatory focus that registrants should consider in preparing their 2025 20-F.

— **Avoiding the Kitchen Sink.**

- SEC Chairman Atkins has cautioned against "kitchen sink" disclosure practices that burden filings with non-material information, critiquing that filings have become "a repository for too much" and are "not serving investors well."[20]
- Instead of deploying boilerplate or catch-all disclosures to ensure comprehensive coverage, registrants should focus on coherently and pithily addressing financially material information specific to the issuer's business. Information should be presented in a clear, concise and understandable manner.

— **Item 5 Management's Discussion and Analysis (MD&A).**

- MD&A and non-GAAP financial measures continued to attract SEC staff attention in comment letters.
- Staff comments have emphasized the need for robust, quantified disclosures in the MD&A section.
- Qualitative discussions of operational results must be supplemented with specific quantitative analysis. Issuers should identify and explain material changes in financial statement line items, providing the reasons for and quantifying the effects of known trends, events and uncertainties.

— **Non-GAAP Financial Measures and IFRS Compliance.**

- Non-GAAP reporting practices continued to draw SEC attention in comment letters.
  - Based on recent comment letters, registrants should carefully review their presentation of non-GAAP financial measures to assess compliance and ensure that they (i) identify non-GAAP metrics, (ii) present comparable GAAP measures with equal or greater prominence, and (iii) provide clear reconciliations to the most directly comparable GAAP or IFRS measures.
  - Registrants should also ensure compliance with IFRS as issued by the IASB, particularly for issuers that reference locally adopted versions of IFRS.

— **Internal Controls and Certifications.**

- Staff comments have addressed internal control over financial reporting disclosures, including the use of proper terminology when describing control deficiencies (*e.g.*, "material weakness" versus "significant deficiency") and the completeness of officer certification language under Sections 302 and 906 of the Sarbanes-Oxley Act.

— **Previously Reported Change in Accountant.**

- On March 20, 2025, SEC staff clarified that, per Instruction 2 to Item 16F(a), the requirement to disclose a change in a registrant's certifying accountant may be satisfied as "previously reported" (as defined in Exchange Act Rule 12b-2) if a previously filed Form 6-K contains disclosure that satisfied the requirements of Item 16F(a).

III. Other Recent Developments Impacting FPIs

A. Section 16(a) Insider Reporting: Elimination of FPI Exemption

Section 8103 of the FY 2026 National Defense Authorization Act ("NDAA"), titled the Holding Foreign Insiders Accountable Act, has passed Congress and is expected to be signed into law imminently. This legislation will eliminate the longstanding regulatory exemption that shields officers and directors of FPIs from the Exchange Act Section 16(a) insider reporting regime. Once the law takes effect, FPI officers and directors will become subject to the same obligations to file Forms 3, 4 and 5 that currently apply to their domestic counterparts, with amendments becoming effective 90 days after the law's enactment. While not directly affecting Form 20-F disclosures, FPIs should closely monitor these developments and begin evaluating compliance implications.

B. Concept Release on FPI Eligibility

On June 4, 2025, the SEC issued the Concept Release soliciting public comment on potential reforms to narrow the FPI definition and eligibility criteria. The Commission's six areas of potential reform encompass (i) updating existing eligibility tests, (ii) imposing non-U.S. trading-volume requirements, (iii) mandating listing on major foreign exchanges, (iv) assessing foreign regulatory frameworks, (v) developing mutual-recognition systems, and (vi) requiring international cooperation agreements. Auditors, exchanges, issuers, industry associations, and law firms, including Cleary Gottlieb,[21] submitted comments, many observing that significant changes could undermine the competitiveness of U.S. capital markets and discourage listings by FPIs. Some commenters favored stricter requirements for FPIs from jurisdictions perceived to lack robust regulatory oversight.

The comment period closed on September 8, 2025. The item remains in the pre-rule stage, with no Notice of Proposed Rulemaking yet scheduled. FPI reporting requirements, including preparation of the 2025 20-F, remain unaffected. Any future reforms would likely apply prospectively.

For additional insights, see our alert memo, available here.

C. Cross-Border Oversight: New Enforcement Task Force

On September 5, 2025, the SEC announced the creation of a dedicated Cross-Border Task Force targeting transnational violations by foreign-based companies accessing U.S. capital markets.[22] This signals heightened regulatory scrutiny of FPIs, particularly those in jurisdictions where governmental influence, regulatory opacity or structural factors elevate investor risk. For more information about the task force, see our alert memo, available here.

- **Enforcement Priorities.** The task force will pursue actions against issuers, intermediaries, gatekeepers and traders who facilitate market manipulation and fraud, with particular emphasis on coordinated cross-border schemes.
- **Implications for FPIs.** FPIs with operations or exposure in jurisdictions that the SEC considers high-risk, including China, should anticipate enhanced scrutiny of internal controls, disclosure practices and risk governance.
- **Evolving Disclosure Expectations.** The SEC has indicated that additional guidance or rulemaking may be forthcoming to address cross-border risks.
- Registrants preparing their 2025 20-F should consider the Commission's heightened cross-border risk focus.

D. EDGAR Next

Compliance with the EDGAR Next system became mandatory on September 15, 2025. For more information, see our memo Preparing an Annual Report on Form 20-F – Guide for 2025, available here.

Registrants that have not yet enrolled or been granted access to EDGAR Next **will be unable to file on EDGAR until they complete enrollment or gain access.**

— Filers that had EDGAR accounts prior to March 24, 2025 and that have not yet enrolled may do so through December 19, 2025, at 10 p.m. ET, but cannot file their next 20-F until enrollment is complete.

— After this date, filers that have not enrolled must submit a new Form ID application and receive SEC staff approval before they can file on EDGAR or access their accounts, risking filing delays.

Delegated Entities. As a reminder, any third parties handling submissions — including exchanges, filing agents, law firms or broker-dealers — must be previously designated as "Delegated Entities" under EDGAR Next to avoid filing delays.

— Ahead of listing or delisting securities other than common stock (for example, following the redemption of a class of debt securities), issuers should ensure the relevant exchange has been set up as a Delegated Entity and has access to file required forms, if necessary.

For questions regarding EDGAR Next compliance, contact your Cleary team.

E. Insider Trading

— **New SEC Guidance on Insider Trading Disclosures.** On April 25, 2025, SEC staff updated C&DIs related to Insider Trading and Rule 10b5-1. These clarifications impact FPIs' internal compliance frameworks and insider trading policy disclosures filed as an exhibit to Form 20-F. The updates include two new C&DIs addressing 401(k) brokerage window trading (C&DI 120.32) and clarifying the tax withholding exception (C&DI 120.33), plus revisions to existing C&DIs incorporating cooling-off periods, good faith obligations, and guidance on limit orders, plan modifications, terminations, and 401(k) transactions. The SEC's updated C&DIs regarding Rule 10b5-1 have indirect implications for FPIs, that must comply with Rule 10b5-1 and, under Form 20-F Item 16J, disclose whether they have adopted insider trading policies and procedures and file those policies as an exhibit.

— **Filing Requirements Reminder:** As a reminder, registrants were required to disclose whether they have adopted insider trading policies in their 2024 Form 20-F and file them as exhibits. For more information on the insider trading rule changes, see our alert memo from last year, available here.

F. Beneficial Ownership Reporting

— **New SEC Guidance.** On July 11, 2025, SEC staff issued C&DIs for Schedules 13D and 13G offering guidance for compliance with the final rules adopted in October 2023 that modernize beneficial ownership reporting requirements. For more information, see our memo Preparing an Annual Report on Form 20-F – Guide for 2024, available here.

— **Scope of the C&DI Guidance.** The new C&DIs clarify (i) when two or more persons constitute a "group" for purposes of triggering the requirement to file a Schedule 13D or Schedule 13G report, (ii) eligibility criteria for using the shorter Schedule 13G form versus the more detailed Schedule 13D, and (iii) other updates to align SEC guidance with the new rules.

— **Takeaway:** Investors should continue to be mindful of beneficial ownership reporting requirements to ensure accurate and timely filings.

G. False Claims Act and "Illegal DEI"

— **False Claims Act Exposure.** Citing EO 14173, the DOJ has cautioned that it will investigate "illegal DEI" by private sector actors that receive federal funds and has directed the use of "all available resources" to prosecute offenses,

including bringing actions under the FCA for alleged violations of civil rights laws.[23]

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- **Practice Tips:**
  - **Even registrants that are not federal contractors or that do not directly receive federal funds should take a comprehensive look at their broader supply chain to assess potential exposure under the FCA, including whether they supply U.S. embassies or are subcontractors to federal contractors.**
  - Companies that expect to have employees signing the certification required under EO 14173,[24] or sub-certifications to a company that has to sign such a certification, should implement a careful policy to steer clear of potential violations of the FCA, including conducting a privileged review of DEI inventory and assessing and mitigating risks.
  - Registrants should review DOJ's non-binding guidance to understand DOJ's positions and assess risks, including DOJ's interests in the elimination of demographic-based criteria, diversity quotas, training programs and employment resources not open to all employees.

H. Nasdaq Rule Changes

Nasdaq has proposed significant changes to its listing standards that would affect FPIs listed on or considering a Nasdaq listing. The proposed rules, submitted to the SEC on September 3, 2025, would impose stricter compliance requirements, including (i) a $15 million minimum public float for initial listings, (ii) expedited delisting for companies below $5 million in market value, and (iii) $25 million minimum offering proceeds for China-focused issuers. If approved, new initial listing requirements would take effect immediately, with a 30-day transition for companies already in the listing process and expedited delisting operative 60 days post-approval.

[1] *A Review of the President's Fiscal Year 2026 Budget Request for the SEC: Hearing Before the S. Appropriations Subcommittee on Fin. Servs. and Gen. Gov't*, 119th Cong. (2025) (testimony of Paul S. Atkins, Chairman, SEC).
[2] Paul Atkins, *Let The Market Decide How Often Companies Report*, Fin. Times (Sep. 29, 2025), https://www.ft.com/content/0f6be08a-fd24-4558-b373-6ada31e18900.
[3] *Id*.
[4] *Oversight Hearing of the SEC: Hearing Before the H. Appropriations Subcommittee on Fin. Servs. and Gen. Gov't,* 119th Cong. (2025) (testimony by Paul S. Atkins, SEC, Chairman).
[5] *SEC Reporting Update*, EY (Sep. 11, 2025), https://www.ey.com/content/dam/ey-unified-site/ey-com/en-us/technical/accountinglink/documents/ey-secru28204-251us-09-11-2025.pdf; *SEC Comment Letter Trends*, PwC (Nov. 6, 2025), https://viewpoint.pwc.com/dt/us/en/pwc/sec_comment_letters/comment_letter_trends_DM/SEC_comment_letters.html (last visited Dec. 14, 2025).
[6] Commissioners are reclaiming the authority to open investigations and authorize subpoenas — powers that were previously delegated to the Division of Enforcement. Additionally, the number of regional management layers is being reduced. *U.S. Securities and Exchange Commission Agency RIF and Reorganization Plan*, SEC (Mar. 13, 2025), https://www.sec.gov/files/sec-agency-rif-reorganization-plan-arrp.pdf.
[7] Caroline A. Crenshaw, Comm', SEC, Statement on the Concept Release on Foreign Private Issuer Eligibility (June 4, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-crenshaw-concept-release-foreign-private-issuer-eligibility-060425.
[8] Mark T. Uyeda, Comm', SEC, Remarks at the SEC Roundtable on Artificial Intelligence in the Financial Industry (Mar. 27, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-ai-roundtable-032725.
[9] Press Release, SEC, SEC Announces Cyber and Emerging Technologies Unit to Protect Retail Investors (Feb. 20, 2025), https://www.sec.gov/newsroom/press-releases/2025-42?utm_medium=email&utm_source=govdelivery.
[10] Paul S. Atkins, Chairman, SEC, American Leadership in the Digital Finance Revolution (July 31, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125.
[11] *Crypto@SEC*, SEC, https://www.sec.gov/about/crypto-task-force/cryptosec (last visited Dec. 5, 2025).
[12] SEC, Div. of Corp. Fin., Statement on Stablecoins (Apr. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425 (on file with author).
[13] SEC, Div. of Corp. Fin., Statement on Certain Protocol Staking Activities (May 29, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925.
[14] SEC, Div. of Corp. Fin., Staff Statement on Meme Coins (Feb. 27, 2025), https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins.
[15] SEC, Div. of Corp. Fin., Statement on Certain Liquid Staking Activities (Aug. 5, 2025), https://www.sec.gov/newsroom/speeches-statements/corpfin-certain-liquid-staking-activities-080525.
[16] SEC, Div. of Corp. Fin., Crypto Asset Exchange-Traded Products (July 1, 2025), https://www.sec.gov/newsroom/speeches-statements/cf-crypto-asset-exchange-traded-products-070125.
[17] SEC, Div. of Corp. Fin., Statement on Certain Proof-of-Work Mining Activities (Mar. 20, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025.
[18] The "VIE" model is a structure under which non-Chinese holding companies enter into contractual arrangements with China-based operating companies to circumvent foreign ownership restrictions.
[19] Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Additional Initial Listing Criteria for Companies Primarily Operating in China, Exchange Act Release No. 34-104058, 90 Fed. Reg. 46973 (Sep. 25, 2025), https://www.sec.gov/files/rules/sro/nasdaq/2025/34-104058.pdf.
[20] Psaros Center for Financial Markets and Policy, *FMQ 2025: A Conversation with Paul Atkins, Chairman, U.S. Securities and Exchange Commission* (YouTube, Sep. 25, 2025), https://www.youtube.com/watch?v=FvJ13nVmEss&list=PLIfTUYna5reJNiIoJYDiJg5UYoKGhmpdg&index=11.
[21] *See* Letter from Cleary Gottlieb Steen & Hamilton LLP to Vanessa A. Countryman, Sec'y, SEC (Sep. 5, 2025), https://www.sec.gov/comments/s7-2025-01/s7202501-649247-1945614.pdf (on file with author).
[22] Press Release, SEC, SEC Announces Formation of Cross-Border Task Force to Combat Fraud (Sep. 5, 2025), https://www.sec.gov/newsroom/press-releases/2025-113-sec-announces-formation-cross-border-task-force-combat-fraud (on file with author).

[23] Memorandum from Brett A. Shumate, Assistant Att'y Gen., U.S. Dep't of Just., Civ. Div., to all U.S. Dep't of Just. Civ. Div. Emps., at 1, 2 (June 11, 2025), https://www.justice.gov/civil/media/1404046/dl.

[24] Under EO 14173, contractors of the federal government are required to: (1) agree that their compliance with federal anti-discrimination laws is material to the government's payment decisions for purposes of the False Claims Act; and (2) certify that they do not operate any programs promoting DEI that violate any applicable federal anti-discrimination laws. Such entities could face damages and penalties if the government determines they have knowingly violated civil rights laws or falsely certified compliance with such laws. Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025).