

From the Public Company Advisory Group of Weil, Gotshal & Manges LLP

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Quarterly Review of Corporate Governance and Public Company Disclosure Developments

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In this quarterly newsletter, we highlight key developments related to the following recent U.S. Securities and Exchange Commission (the “SEC”) rulemakings:

- Climate Disclosure
- Cybersecurity Disclosure
- SPACs
- Section 13(d) Beneficial Ownership
- Insider Trading Policies and Exhibit

Adoption of Final Climate Disclosure Rules

On March 6, 2024, the SEC adopted final climate-related disclosure rules, which have future compliance dates particular to certain disclosures and types of registrants. The rules currently face legal challenges from states, businesses, and environmental groups, with many petitions consolidated for review in the U.S. Court of Appeals for the Eighth Circuit. On April 4, 2024, the SEC [stayed](#) its final rules pending the completion of review of the consolidated Eighth Circuit petitions. It does not stay any other SEC rules or guidance, which includes the SEC’s [2010 guidance](#). The SEC stated that it will vigorously defend the final rules’ validity in court and that it looks forward to expeditious resolution of the litigation. Despite the legal challenges and the SEC’s stay, we believe that companies should maintain their focus on climate disclosure requirements. Additionally, companies are expected to respond to other mandates and pressures arising from state laws, international climate standards, investors, and other stakeholders.

The new rules, primarily housed in new Subpart 1500 of Regulation S-K and Article 14 of Regulation S-X, require companies to provide climate-related disclosures in their Form 10-K and Form 20-F and registration statements. The final rules include several revisions aimed at making the regulations less prescriptive than those initially proposed. These changes include the elimination of the requirement to disclose Scope 3 greenhouse gas emissions and the removal of financial impact metrics. The latter would have necessitated the disclosure of climate-related impacts on each line item of a company’s consolidated financial statements.

For more information, please refer to Weil’s Governance and Securities Alert, available [here](#).

Effectiveness of Cybersecurity Disclosure Rules

In July 2023, the SEC adopted final cybersecurity disclosure rules which require U.S. public companies to disclose (1) on Form 8-K (Item 1.05) the occurrence of a material cybersecurity incident within four business days after determining that such incident is material and (2) in the Annual Report on Form 10-K (Item 1C), the company's risk management, strategy and governance of cybersecurity. Foreign private issuers ("FPIs") are subject to similar requirements. Companies have been required to comply with the incident disclosure requirements on Forms 8-K and 6-K (for FPIs) since December 18, 2023 (other than smaller reporting companies which must comply with these requirements by June 15, 2024). All companies are required to comply with the risk management, strategy and governance disclosure beginning with annual reports for the fiscal year ending on or after December 15, 2023. Inline XBRL requirements begin one year after the initial compliance date for any issuer for the related disclosure requirement.

Recently, at Practising Law Institute's "SEC Speaks in 2024" program, the SEC Staff highlighted areas to focus on in relation to the cybersecurity rules. The Staff stressed that for a Form 8-K Item 1.05 disclosure of a cybersecurity incident's impact (or reasonably likely impact), companies should be considering disclosure of qualitative in addition to quantitative impacts. The Staff noted that to the extent material, disclosures should discuss the impact of any data theft and impact of the incident on the company's reputation, competitiveness and customer or vendor relationships, even if those cannot be linked directly to a company's financial statements. See, e.g., the text accompanying footnote 121 of the SEC's [adopting release](#).

The Staff also discussed the concept that materiality assessments be made "without unreasonable delay" after discovery of a cybersecurity incident (per Instruction 1 to Form 8-K Item 1.05), specifically highlighting that if a company has regular protocols and procedures in place, including ones that layer in the materiality assessment for the incident, any change to those procedures that delays or is done to delay or postpone the materiality determination might constitute "unreasonable delay." The Staff also noted that companies might not need to wait for the investigation or fact gathering to be complete to make a materiality determination, and that Instruction 2 to Form 8-K Item 1.05 contemplates that possibility by allowing unavailable information to be provided later by amendment. See pp. 37-38 of the SEC's [adopting release](#).

For more information, please refer to Weil's Governance and Securities Alert, available [here](#).

Tougher Rules for SPACs

On January 24, 2024, the SEC approved final rules to overhaul regulations covering special purpose acquisition companies ("SPACs"). With a few notable exceptions, the final rules are in line with the rules proposed in 2022.

The new SPAC rules become effective on July 1, 2024. However, registrants will have until June 30, 2024 to comply with the new Inline XBRL tagging requirements.

It should be noted that the changes made by the final rules to Item 10(b) of Regulation S-K (the SEC's guidelines on the use of projections) are not limited to filings by SPACs or other shell companies and apply to projections in all SEC filings.

For more information, please refer to Weil's Governance and Securities Alert, available [here](#) for a discussion of the final rules, and our or alert [here](#) for a discussion of the 2022 proposed rules.

Amendments to Rules Governing Section 13(d) Beneficial Ownership Reporting

On October 10, 2023, the SEC adopted amendments to the rules governing Section 13(d) beneficial ownership reporting. Among other things, the new rules generally shorten the deadlines for Schedule 13D and Schedule 13G filings, clarify the disclosure and beneficial ownership requirements with respect to derivative securities, and provide guidance regarding "group" formation.

The amendments also extend the “cut-off” time to submit Schedule 13D and Schedule 13G filings from 5:30 p.m. to 10 p.m., Eastern Time, and require that all disclosures in such filings, other than exhibits, be made using a structured, machine-readable data language. The amendments became effective February 5, 2024, except that compliance with the revised Schedule 13G deadlines will be required beginning on September 30, 2024 and compliance with the structured data requirement for Schedules 13D and 13G will be required on December 18, 2024.

For more information, please refer to Weil’s Governance and Securities Alert, available [here](#).

Insider Trading Policy Disclosure and Exhibit

In December 2022, the SEC adopted amendments to its Exchange Act rules, which, among other things, created new requirements for companies to disclose in Form 10-K or Form 20-F and proxy and information statements whether they have adopted insider trading policies and procedures governing the purchase, sale and/or other dispositions of the company’s securities by directors, officers, and employees, or the company itself, that are reasonably designed to promote compliance with insider trading laws and applicable listing standards, and, if the company has no such policies, explain why not. Companies will also be required to file their insider trading policies and procedures, if applicable, as an exhibit. See Regulation S-K Item 408(b) and Form Item 16J of Form 20-F. Entities other than smaller reporting companies are required to comply in the first filing that covers the first full fiscal period that begins on or after April 1, 2023. Accordingly, this new disclosure and exhibit will be required for these companies in their next Form 10-K or Form 20-F. Smaller reporting companies are required to comply in the first filing that covers the first full fiscal period that begins on or after October 1, 2023.

For more information, please refer to Weil’s Governance and Securities Alert, available [here](#).

Upcoming Reminders for the second quarter of 2024:

- May 28, 2024 – New T+1 settlement cycle effective for all applicable securities transactions. For more information, see alerts from [Nasdaq](#) and [New York Stock Exchange](#).
- June 15, 2024 – Smaller reporting companies must comply with the cybersecurity incident disclosure requirements of Forms 8-K and 6-K.
- June 28, 2024 – The annual public float measurement date for determination of smaller reporting company status for reporting companies with a December 31 fiscal year end.
- June 28, 2024 – The annual FPI status testing date for FPIs with a December 31 fiscal year end.

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