



2022

CLE Weeks

December 5-16, 2022





Securities 2022: New Rules and Enforcement Action Trends



Public Company Rule Updates (Excluding Rules for Investment Advisers, Investment Companies, Broker Dealers and Alternative Trading Systems)

Release Date	Status	Key Implementation Date(s)	Rule Change	Release No.
Jan. 13, 2022	Proposed (Final Rule Stage)	Final Action expected April 2023 ¹	Rule 10b5-1 and Insider Trading	33-11013
Feb. 10, 2022	Proposed (Final Rule Stage)	Final Action expected April 2023 ²	Modernization of Beneficial Ownership Reporting	33-11030
Mar. 9, 2022	Proposed (Final Rule Stage)	Final action expected April 2023 ³	Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure	33-11038
Mar. 21, 2022	Proposed (Final Rule Stage)	Final Action originally predicted to be October 2022. ⁴ Likely to be finalized in the upcoming months. ⁵	The Enhancement and Standardization of Climate-Related Disclosures for Investors	33-11042
Mar. 30, 2022	Proposed	Notice on Proposed Rule Making (NPRM) was expected June 2022. Comments closed June 13, 2022. No anticipated date for final action yet (but still in proposed rule stage). ⁶	Special Purpose Acquisition Companies, Shell Companies, and Projections	33-11048

¹ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=3235-AM86>

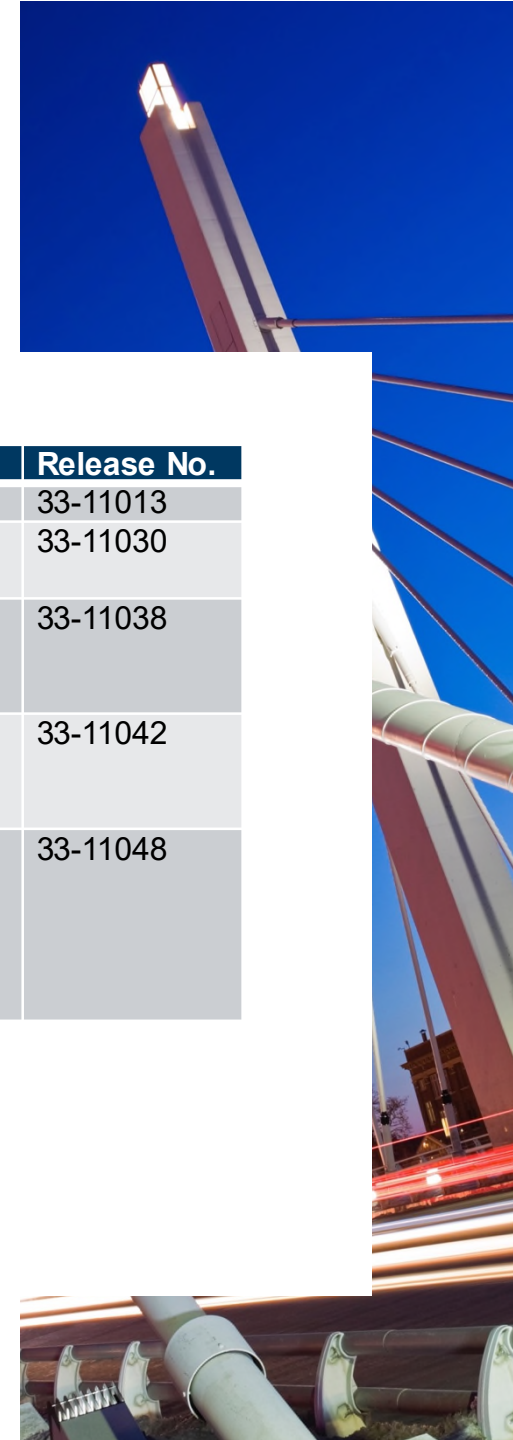
² <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=3235-AM93>

³ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=3235-AM89>

⁴ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=3235-AM87>

⁵ <https://news.bloomberglaw.com/securities-law/sec-climate-rules-pushed-back-amid-bureaucratic-legal-woes>

⁶ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=3235-AM90>



Public Company Rule Updates (Excluding Rules for Investment Advisers, Investment Companies, Broker Dealers and Alternative Trading Systems) (cont'd)

Release Date	Status	Key Implementation Date(s)	Rule Change	Release No.
Oct. 26, 2022	Final	Effective Date – 60 days after publication in the <i>Federal Register</i> (still forthcoming). Press release announcing final rule was October 26, 2022. ⁷	Listing Standards for Recovery of Erroneously Awarded Compensation	33-11126
Jul. 13, 2022	Proposed	NPRM originally predicted to be October 2022. Comments closed September 12, 2022. No anticipated date for final action yet (but still in proposed rule stage). ⁸	Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8	34-95267
Aug. 25, 2022	Final	October 11, 2022 – Effective Date	Pay Versus Performance	34-95607
Jun. 2, 2022	Final	July 11, 2022 – Effective Date	Updating EDGAR Filing Requirements and Form 144 Filings	33-11070

⁷ Effective 60 days after publication of the final rule in the Federal Register, typically three business days after SEC files the rule with the Federal Register office. The SEC issued a release announcing the final rule on October 26, 2022. The compliance period for the final rule requires these exchanges and associations to file their proposed listing standards within 90 days of the final rule's publication in the Federal Register and to make such listing standards effective within one year following publication. Similarly, the final rule's disclosure and recovery policy requirements apply to all issuers, including emerging growth companies, foreign private issuers, and smaller reporting companies. Issuers will be required to comply with these listing standards within 60 days of their effective date or be subject to de-listing.

⁸ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=3235-AM91>



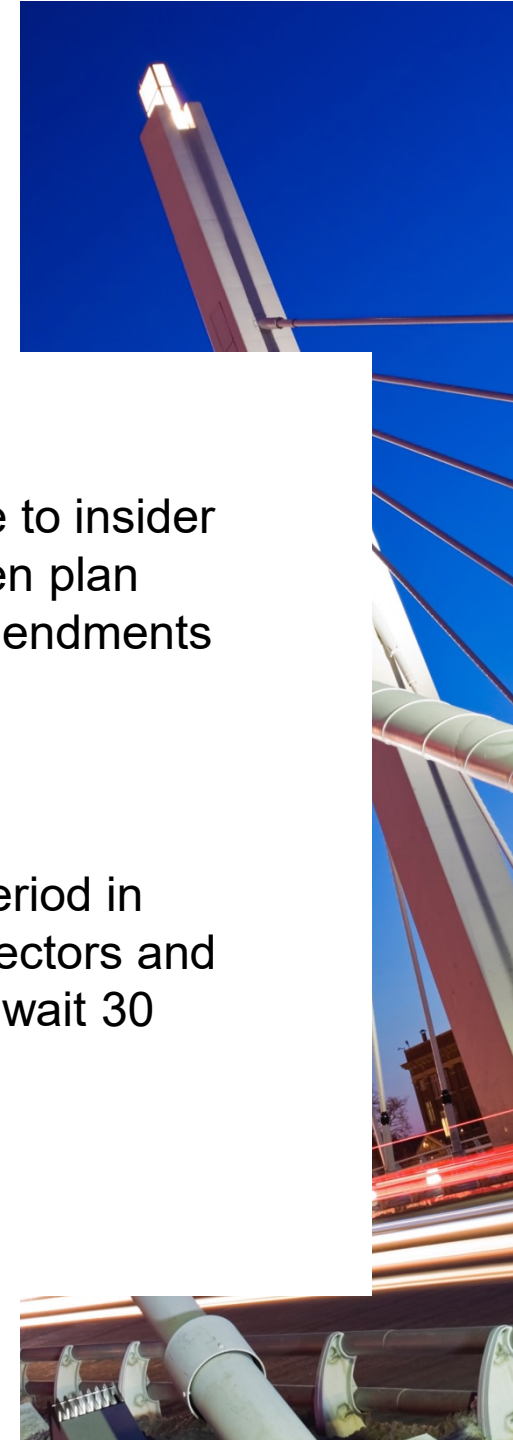
Rule 10b5-1 and Insider Trading

Background:

- Rule 10b5-1 under the Securities Exchange Act of 1934 provides an affirmative defense to insider trading where corporate insiders set up the trade pursuant to a binding contract or written plan made at the time the trader did not possess any material nonpublic information. The amendments are designed to limit the abuse and manipulation of 10b5-1.

What are the Key Elements of the Proposed Rule?

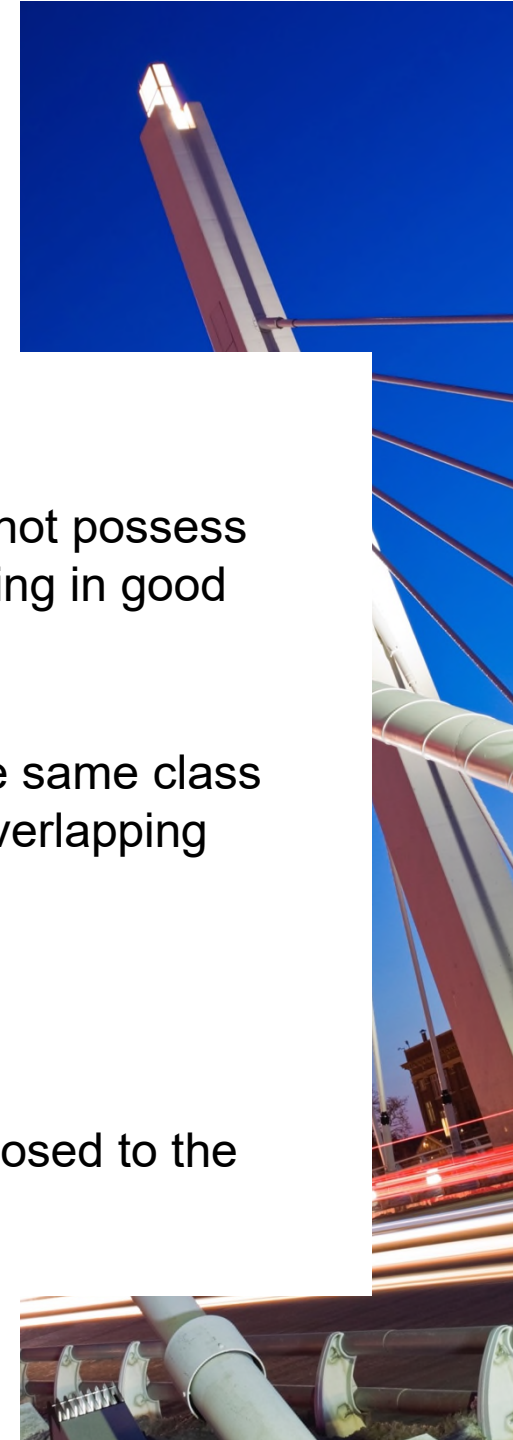
- **Mandatory Cooling-Off Periods for Directors, Officers, and Companies:**
The Amendments would require a minimum cooling-off period (i.e., the specified time period in which insiders cannot trade under a Rule 10b-5 plan after it is adopted or modified). Directors and Section 16 officers would be required to wait 120 days, while companies would need to wait 30 days.



Rule 10b5-1 and Insider Trading (cont'd)

What are the Key Elements of the Proposed Rule? (cont'd)

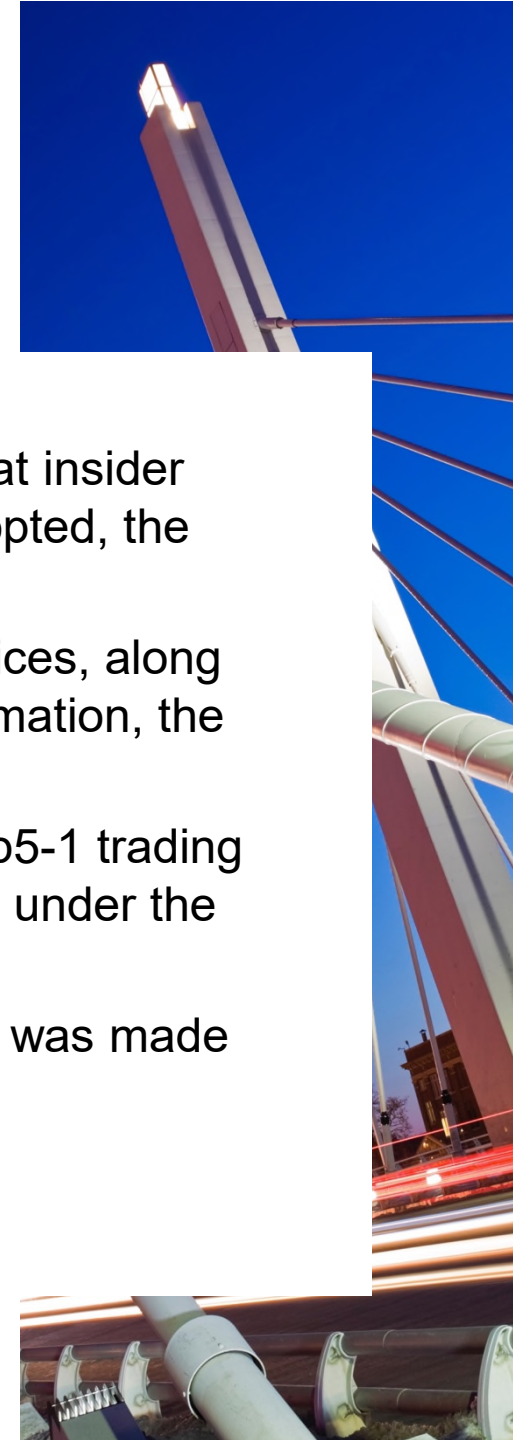
- **Director and Officer Certifications in Personal Capacity:**
Directors and officers would need to provide written certification promising that they do not possess material nonpublic information about the company or its securities and that they are acting in good faith when adopting or modifying the plan.
- **No Overlapping Plans:**
The rule prohibits more than one Rule 10b5-1 plan for trading on the open-market in the same class of securities. Such change would limit the ability of corporate insiders to use multiple, overlapping plans to selectively cancel trades, conduct continuous repurchase programs, etc.
- **Single-Trade Plans:**
Only one single-trade plan would be allowed in any 12-month period.
- **Operating in Good Faith:**
The amendments would require that the 10b5-1 plans be operated in good faith, as opposed to the current requirement they simply be entered into in good faith.



Rule 10b5-1 and Insider Trading (cont'd)

Enhanced Disclosures:

- Under the Amendments, an issuer would be required to disclose in its annual report what insider trading policies and procedures the company has adopted. If no policies have been adopted, the company must explain why.
- In its annual reports, companies must also disclose their option grant policies and practices, along with a table of the grants made within 14 days of the release of material nonpublic information, the filing of a periodic report, or an issuer share repurchase.
- Companies must provide quarterly disclosure of any adoption or termination of Rule 10b5-1 trading plans and their terms, including the duration of the plan, aggregate amount of securities under the plan, and the names and titles of all directors and officers involved.
- Section 16 officers and directors must disclose on Forms 4 and 5 whether a transaction was made pursuant to a 10b5-1(c) trading plan.



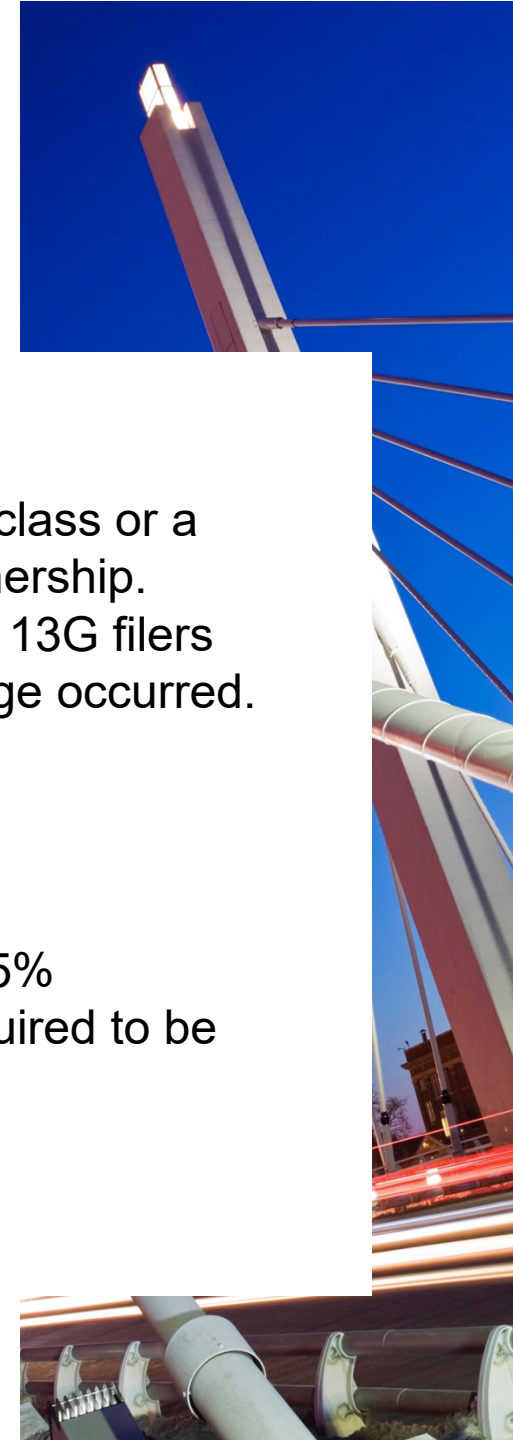
Modernization of Beneficial Ownership Reporting

Background:

- The previous regulations required investors who beneficially owned more than 5% of a class or a registrant's equity securities to file a Schedule 13D or Schedule 13G reporting their ownership. Schedule 13D filers had to file within 10 days of acquiring more than 5%, and Schedule 13G filers were required to file within 45 days after the end of the calendar year in which the change occurred. The Amendments would significantly shorten the deadlines, among other things.

What are the Key Elements of the Proposed Rule?

- **New Filing Deadlines:**
 - Schedule 13D filers would be required to file within 5 days after acquiring more than 5% ownership in the securities, instead of the current 10. Any amendments would be required to be filed within 1 business day.

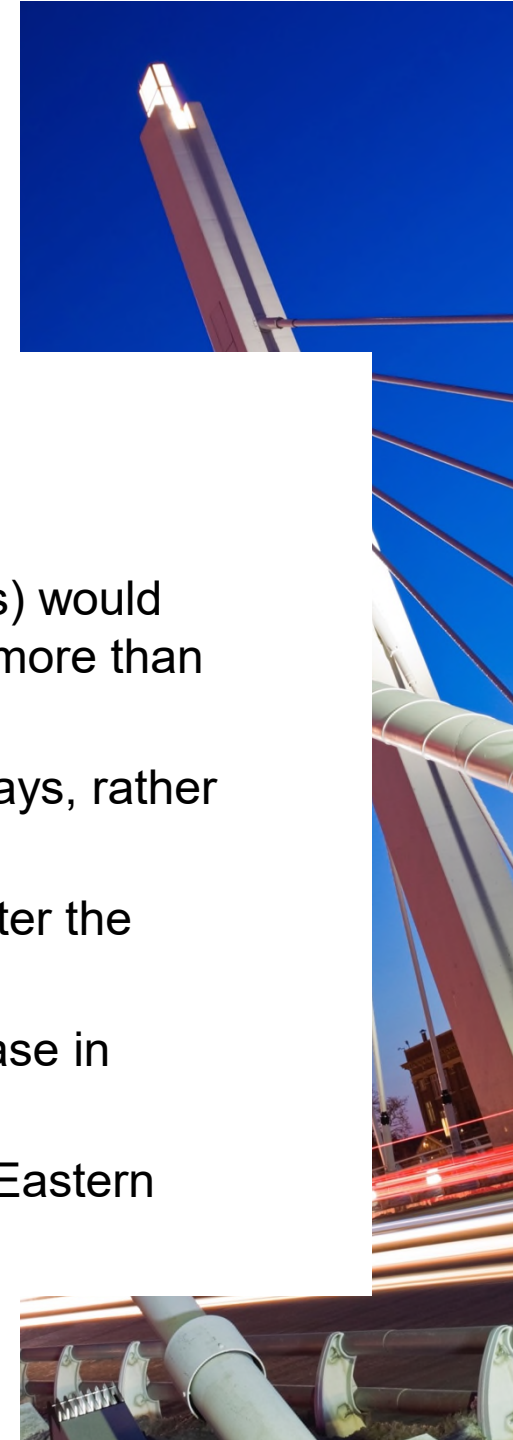


Modernization of Beneficial Ownership Reporting (cont'd)

What are the Key Elements of the Proposed Rule? (cont'd)

■ New Filing Deadlines (cont'd):

- Certain Schedule 13G filers (i.e., qualified institutional investors and exempt investors) would need to file within 5 business days after the end of the month in which they acquired more than 5% ownership, rather than the 45-day period.
- Other Schedule 13G filers (i.e., passive investors) would be required to file within 5 days, rather than the current 10.
- All Schedule 13G filers would need to file any amendments within 5 business days after the month in which the amendment change occurred, rather than the current 45 days.
- If a Schedule 13G filer exceeds 10% beneficial ownership or a 5% increase or decrease in ownership, they would also be subject to accelerated amendment obligations.
- The cutoff times for deadlines are extended from 5:30 pm Eastern Time to 10:00 pm Eastern Time.

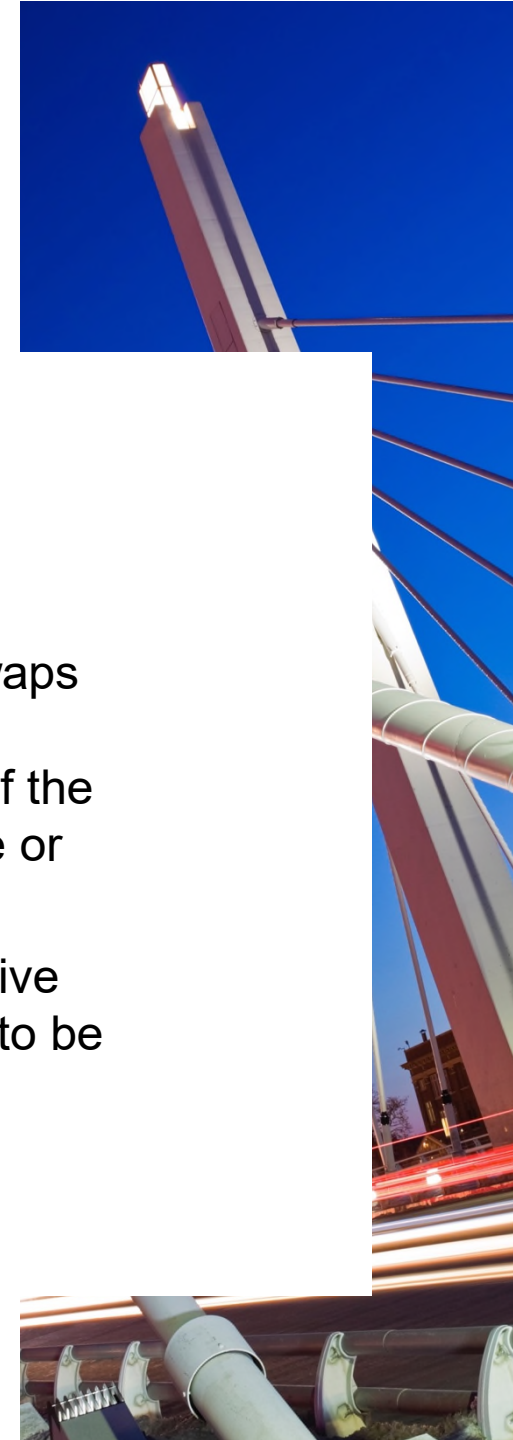


Modernization of Beneficial Ownership Reporting (cont'd)

What are the Key Elements of the Proposed Rule? (cont'd)

■ Beneficial Ownership for Cash-Settled Derivative Securities

- Beneficial owners now include holders of certain cash-settled derivative securities.
- Specifically, holders of cash-settled derivative securities other than security-based swaps would constitute beneficial owners of the reference equity securities, so long as the derivatives are held with the purpose or effect of changing or influencing the control of the issuer of the reference securities or in connection with a transaction with that purpose or effect.
- Under Item 6 of Schedule 13D, all derivative securities (including cash-settled derivative securities) that use the issuer's equity securities as a reference security are required to be disclosed.



Modernization of Beneficial Ownership Reporting (cont'd)

What are the Key Elements of the Proposed Rule? (cont'd)

■ Group Formation:

- Tipper-tippee relationships, among others, now constitute “forming a group” under Schedule 13G and are subject to group regulation.
- The Amendments provide 2 exemptions that will explicitly not be subject to group regulation: (1) investors who communicate with each other or the issuer without the purpose or effect of changing or influencing control of the issuer, and (2) investors and financial institutions who enter into agreements governing the terms of derivative securities.

■ Structured Data Requirements:

- The Amendments require that Schedule 13D and Schedule 13G be filed using structured, machine-readable data language. Exhibits can be unstructured.



Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure

Background:

- The Amendments add new cybersecurity disclosure requirements, which are primarily designed to better inform investors about a registrant's risk management, strategy, and governance in a standardized and consistent manner.

What are the Key Changes of Proposed Amendments?

- **Reporting of Material Cybersecurity Incidents:**
Companies are now required to disclose material cybersecurity incidents within 4 business days, pursuant to new Item 1.05 on the amended Form 8-K. The date of disclosure is tied to the date that the registrant determines it has experienced a material cybersecurity incident, rather than the date of discovery of the incident itself.



Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (cont'd)

What are the Key Changes of Proposed Amendments? (cont'd)

- **Material Updates:**

106(d) of Regulation S-K and Item 16J(d) of Form 20-F now require registrants to disclose any material updates, changes, or additions to any previously disclosed cybersecurity incidents. Companies also must disclose, to the extent management knows of such, when a serious or previously undisclosed immaterial cybersecurity incidents become material in the aggregate.

- **Form 6-K** would be amended to add “cybersecurity incidents” as a reporting topic.

- **Risk Management and Strategy Disclosures:**

Under Amended Item 106 to Regulation S-K and Item 16J to Form 20-F, Companies would be required to disclose their policies and procedures, if any, for the identification and management of risks from cybersecurity risks. Companies would also need to describe whether it considers cybersecurity as part of its business strategy, financial planning, and capital allocation.



Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (cont'd)

What are the Key Changes of Proposed Amendments? (cont'd)

- **Governance:**

Under Amended Item 106 to Regulation S-K and Item 16J to Form 20-F, companies would be required to disclose information on the board's oversight of cybersecurity risk, including whether the entire board or just specific members or a committee is responsible, and how the board becomes informed about security risks, the frequency of discussions of cybersecurity, etc. Companies must also include disclosures on management's role and expertise in assessing and managing risk, including whether certain management positions or committees are responsible for managing such risk and the relevant expertise of such management.

- **Boardroom Expertise:**

Item 407 of Regulation S-K and Form 20-f, in their amended form, would require disclosure of board member cybersecurity expertise. Companies would have to include such information in their annual reports and certain proxy filings.



The Enhancement and Standardization of Climate-Related Disclosures for Investors

Background:

- The Amendments add new climate-related disclosure requirements, which are primarily designed to better inform investors about a registrant's risk management, strategy, and governance in a standardized and consistent manner.

What are the Key Elements of the Proposed Rule?

- **Content to be Disclosed:** Rules would require disclosure of the following:
 - Any climate-related risks identified and reasonably likely to have a material impact on the company's business and consolidated financial statements, which may manifest over the short, medium, or long-term
 - How any identified and potential material climate-change risks would impact or have impacted the company's strategy, business model, and outlook
 - The governance and oversight of climate-related risks by directors and management



The Enhancement and Standardization of Climate-Related Disclosures for Investors (cont'd)

What are the Key Elements of the Proposed Rule? (cont'd)

Content to be Disclosed: Rules would require disclosure of the following: (cont'd)

- Processes for identifying, assessing, and managing climate-related risks, including whether they are integrated with overall risk management systems or processes
- Various climate-related financial statement metrics, including the impact of climate-related events on line items
- Data on the company's direct GHG emissions that occur from sources owned or controlled by the company (Scope 1) and indirect GHG emissions from the generation of electricity and energy purchased and consumed by the company (Scope 2)
- Indirect emissions from upstream and downstream activities in the company's value chain (Scope 3), if the emissions are material or if the company has set a greenhouse gas emissions reduction target that includes such emissions



The Enhancement and Standardization of Climate-Related Disclosures for Investors (cont'd)

What are the Key Elements of the Proposed Rule? (cont'd)

Content to be Disclosed: Rules would require disclosure of the following: (cont'd)

- Climate-related targets and goals, if applicable:
 - If the company has adopted a transition plan for its risk management strategy, a description of the plan and relevant metrics and targets used to identify and manage risks
 - If the company uses scenario analysis to assess the resilience of its business strategy against climate threats, a description of the scenarios used, parameters, assumptions, analytical choices, and projected principal financial impacts
 - If the registrant uses an internal carbon price, information about the price and how it is set



The Enhancement and Standardization of Climate-Related Disclosures for Investors (cont'd)

Presentation of Disclosures and Attestation:

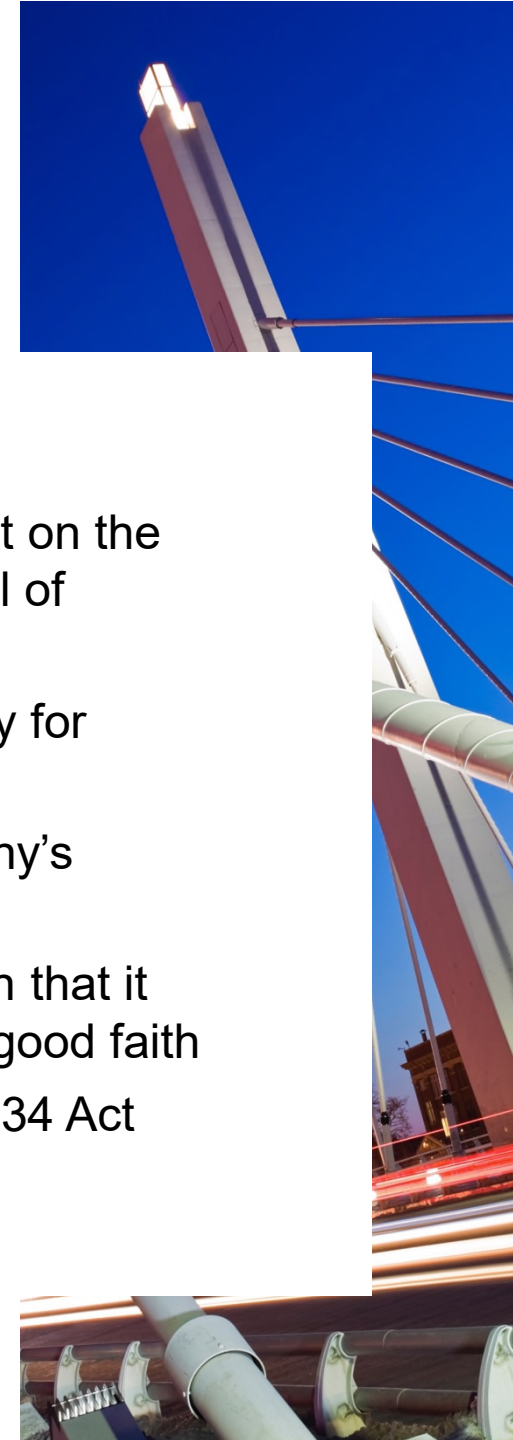
- Companies would need to provide the disclosures in their registration statements and Exchange Act annual reports (i.e., must file, not furnish, climate-related disclosures).
 - Disclosures are subject to potential liability under Section 11 of the '33 Act and Section 18 of the '34 Act.
- The mandated disclosures on climate-related financial statement metrics and related disclosures must be provided in a note to the audited financial statements.
- If the absolute value of negative and positive impacts for climate-related events and transition activities exceeds 1 percent of a related line item, companies must separately disclose all such impacts.
- For accelerated or large accelerated filers, there must be an attestation report from an independent attestation service provider covering Scopes 1 and 2 emissions disclosure.



The Enhancement and Standardization of Climate-Related Disclosures for Investors (cont'd)

- **Phase-In Periods, Safe Harbors, and Exemptions:**

- There will be a phase-in period for all registrants, with the compliance date dependent on the registrant's filer status, and a phase-in period for the assurance requirement and level of assurance required for accelerated and large accelerated filers.
- There will be a safe harbor for forward-looking statements and certain forms of liability for Scope 3 emissions disclosure.
 - The SEC recognizes that information about Scope 3 emissions is outside a company's control and may be difficult for a company to verify
 - A scope 3 emissions disclosure will not be a fraudulent statement unless it is shown that it was made or reaffirmed without a reasonable basis or was disclosed other than in good faith
 - For forward-looking statements, the existing safe harbor under the '33 Act and the '34 Act will apply.
- Smaller reporting companies do not have to report Scope 3 emissions.



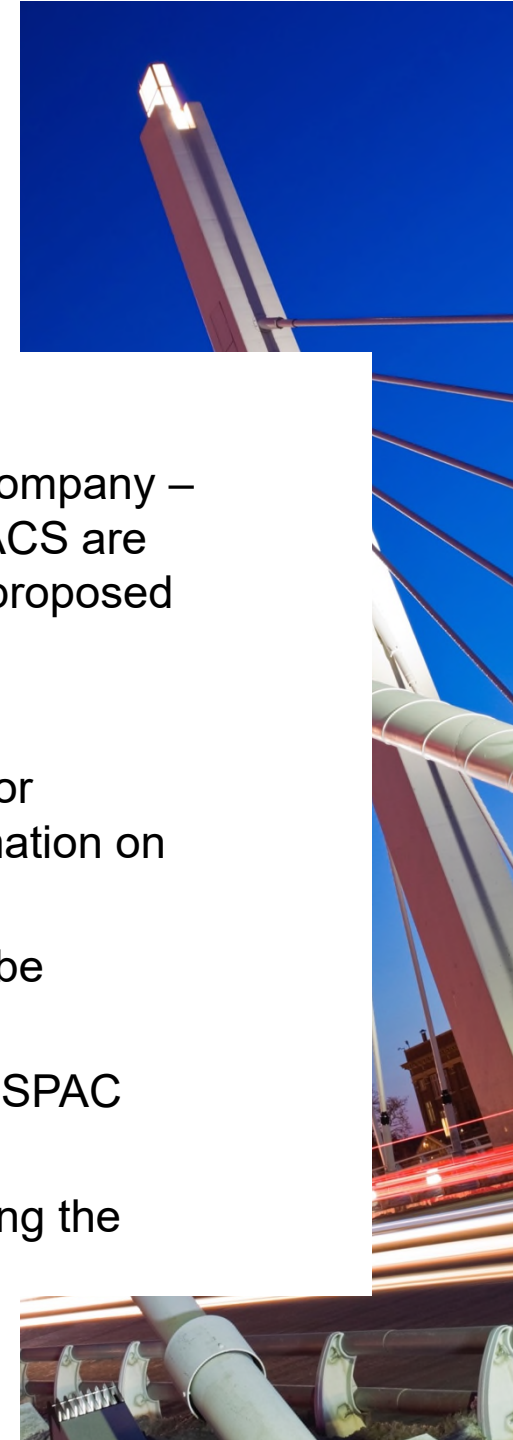
Special Purpose Acquisition Companies, Shell Companies, and Projections

Background

- SPACs are shell companies listed on a stock exchange with the goal of acquiring a private company – allowing it to be “public” without going through the traditional IPO. Common criticisms of SPACs are that they benefit insiders disproportionately and lack appropriate disclosures. The SEC has proposed rules to regulate SPACs in the following ways and thus mitigate some of these concerns.

What are the Key Elements of the Proposed Rule?

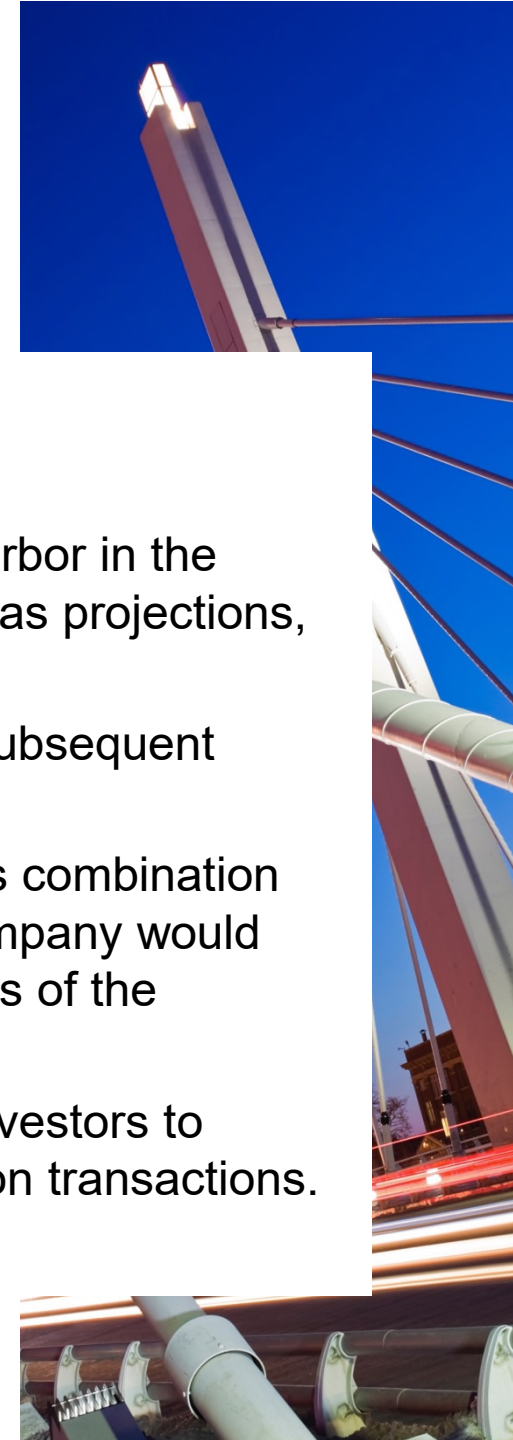
- **Enhanced Disclosures:** The proposed rules are intended to increase disclosure and investor protections in initial public offerings by SPACs and in de-SPAC transactions, including information on SPAC sponsors, conflicts of interest, and dilution. Additionally, the following would apply:
 - De-SPAC Fairness Determination: To carry out a de-SPAC transactions, the SPAC would be required to conduct and disclose the fairness of the transaction to the SPAC investors.
 - Under the new rules, the private company would be required to be a co-registrant when a SPAC files a registration statement on Form S-4 or Form F-4 for a de-SPAC transaction.
 - Smaller reporting company status would need to be re-determined within four days following the consummation of a de-SPAC transaction.



Special Purpose Acquisition Companies, Shell Companies, and Projections (cont'd)

What are the Key Elements of the Proposed Rule? (cont'd)

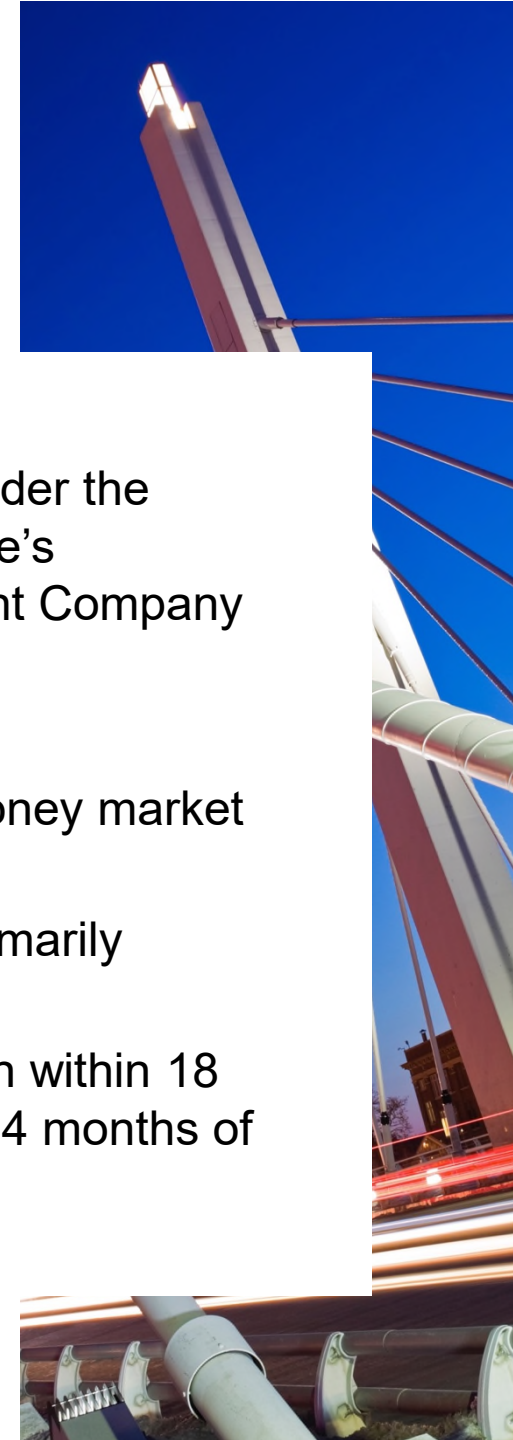
- **Enhanced Disclosures:** (cont'd)
 - The definition of “blank check company” would be redefined make the liability safe harbor in the Private Securities Litigation Reform Act of 1995 for forward-looking statements, such as projections, unavailable for SPACs and certain other blank check companies;
 - Underwriters in a SPAC initial public offering would be considered underwriters in a subsequent de-SPAC transaction when certain conditions are met.
- **Business Combinations Involving Shell Companies:** Under the new rule, a business combination transaction involving a reporting shell company and another entity that is not a shell company would constitute a sale of securities to the reporting shell company’s shareholders for purposes of the Securities Act;
- **Projections Disclosure:** There would be additional disclosure requirements to allow investors to better assess the basis of projections when they are used in SPAC business combination transactions.



Special Purpose Acquisition Companies, Shell Companies, and Projections (cont'd)

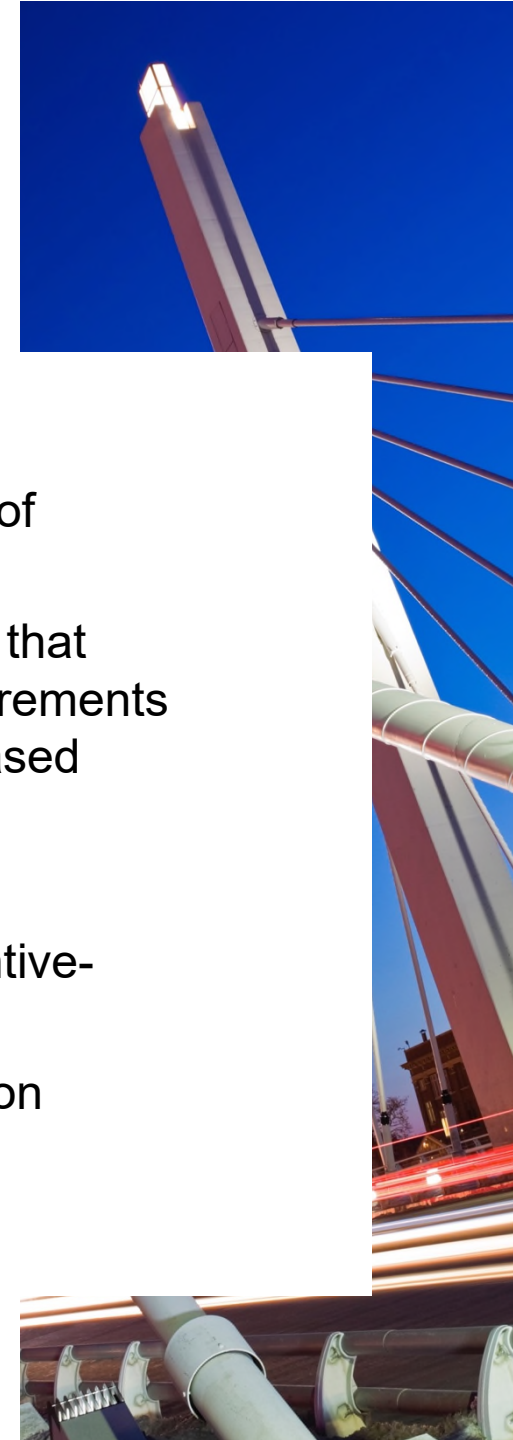
- **Status of SPACS under the Investment Company Act of 1940**

- The proposed rule would address the status of SPACs as “investment companies” under the Investment Company Act. Under the new rule, a SPAC that fully complies with the rule’s conditions would not need to register as an investment company under the Investment Company Act.
- To comply with the conditions, a SPAC must:
 - Maintain assets comprising only cash items, government securities, and certain money market funds;
 - Seek to complete a de-SPAC transaction after which the surviving entity will be primarily engaged in the business of the target company; and
 - Enter into an agreement with a target company to engage in a de-SPAC transaction within 18 months after its initial public offering and complete its de-SPAC transaction within 24 months of such offering.



Listing Standards for Recovery of Erroneously Awarded Compensation

- **Background:**
- In July 2015, the SEC proposed amendments and new rules to implement Section 954 of Dodd-Frank. The proposed rules would, among other things:
 - Require national securities exchanges and associations to establish listing standards that would require listed companies to adopt and comply with a policies meeting the requirements of Section 10D of the Exchange Act for recovery of erroneously awarded incentive-based compensation (“clawback” policies)
 - Delineate the incentive-based compensation that is subject to recovery; and
 - Require each listed company to provide disclosure about its recovery of excess incentive-based compensation and file its compensation recovery policy.
- The Commission was seeking comment on all aspects of the 2015 proposal as well as on additional questions posed in the reopening release.



Listing Standards for Recovery of Erroneously Awarded Compensation (cont'd)

What are the Key Elements of the New Rule?

- The new rules implement Section 10D of the Securities Exchange Act of 1934, which requires national securities exchanges and associations to establish listing standards that require a listed issuer to:
 - (1) adopt and comply with a written “clawback” policy for recovery of erroneously awarded incentive-based compensation received by its current or former executive officers
 - (2) disclose those compensation recovery policies in accordance with Commission rules
- Companies must also disclose their policy on recovery of incentive-based compensation and information about actions taken pursuant to such recovery policy.



Listing Standards for Recovery of Erroneously Awarded Compensation (cont'd)

What are the Key Elements of the New Rule? (cont'd)

- All listed issuers are also required to:
 - file their written recovery policies as exhibits to their annual reports;
 - indicate by check boxes on their annual reports whether the financial statements included in the filings reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis;
 - disclose any actions they have taken pursuant to such recovery policies.
- **Important Note to Remember:** If a company is required to prepare an accounting restatement, it must recover from any current or former executive officer incentive-based compensation that was erroneously awarded in the prior three years. This rule applies to both material restatements of prior-period financial statements *and* restatements that correct errors that are not material to previously issued financial statements (but would result in a material misstatement if either the errors are left uncorrected).



Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8

Background:

- The proposed amendments to Rule 14a-8 would improve the shareholder proposal process and promote consistency by revising three of the substantive bases for excluding a shareholder proposal under the rule.

What are the Key Elements of the Proposed Rule?

- **Substantial Implementation:**
Rule 14a-8(i)(10) currently allows companies to exclude a shareholder proposal that “the company has already substantially implemented.” Under the proposed rule, companies may exclude the proposal if “the company has already implemented the essential elements of the proposal.”



Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8 (cont'd)

What are the Key Elements of the Proposed Rule? (cont'd)

- **Duplication:**

Rule 14a-8(i)(11) currently allows companies to exclude a shareholder proposal that “substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company’s proxy materials for the same meeting.” The proposed amendments now take the phrase “substantial duplicates” to include a proposal that “addresses the same subject matter and seeks the same objective by the same means.”



Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8 (cont'd)

What are the Key Elements of the Proposed Rule? (cont'd)

■ Resubmission:

Rule 14a-8(i)(12) currently allows companies to exclude a shareholder proposal that “addresses substantially the same subject matter as a proposal, or proposals, previously included in the company’s proxy materials within the preceding five calendar years” if the matter was voted on at least once in the last three years and did not receive sufficient shareholder support. Under the proposed amendments,

- a proposal constitutes a resubmission if it “substantially duplicates” a prior proposal; and
- a proposal “substantially duplicates” another proposal if it “addresses the same subject matter and seeks the same objective by the same means.”



Pay Versus Performance

Background:

- In compliance with Section 14(i) of the Securities Exchange Act of 1934, the SEC has adopted final to implement a pay versus performance requirement. This amendment, among other things, requires that companies disclose how compensation is paid, both through descriptive disclosure and tables.

What are the Key Elements of the New Rule?

- **Pay for Performance Table:**
 - Item 402(v) of Regulation S-K requires that companies disclose a table with five years of information on the compensation CEOs and other NEOs were “actually paid,” along with other performance measures such as Total Shareholder Return and net income. SRCs are only required to disclose their three most recently completed fiscal years, as opposed to five.



Pay Versus Performance (cont'd)

What are the Key Elements of the New Rule? (cont'd)

- **Pay versus Performance Descriptive Disclosure.**
 - Companies must provide a description of the relationship between the financial performance measures shown in the Pay for Performance Table and the “actually paid” compensation showed in such.
 - Companies also must describe the relationship between it’s own Total Shareholder Return and the Total Shareholder Return of other companies’ in its peer group.
 - It can provide these disclosures in writing, graphs, or a combination of the two.
- **Tabular List of Performance Measures:**
 - All registrants other than SRCs must provide a table listing between three and seven financial performance measures that it believes are the most important measures for its most recent fiscal year. No further description or explanation of the measures is necessary.



Updating EDGAR Filing Requirements and Form 144 Filings

What are the Key Elements of the New Rule?

The amendments mandate electronic filing or submission of the following documents:

- glossy” annual reports to shareholders, furnished pursuant to Rule 14a-3(c) or Rule 14c-3(b) under the Securities Exchange Act of 1934 (the “Exchange Act”), or under the requirements of Form 10–K for filers reporting pursuant to Section 15(d) of the Exchange Act, or by foreign private issuers on Form 6–K pursuant to Exchange Act Rules 13a-16 or 15d-16;
- notices of exempt solicitation furnished pursuant to Exchange Act Rule 4a-6(g) and notices of exempt preliminary roll-up communications pursuant to Exchange Act Rule 14a-6(n);



Updating EDGAR Filing Requirements and Form 144 Filings (cont'd)

What are the Key Elements of the New Rule? (cont'd)

- annual reports for employee benefit plans on Form 11-K;
- notices of proposed sale of securities on Form 144 where the issuer of the securities is subject to the reporting requirements under Section 13 or 15(d) of the Exchange Act;
- certain reports or other documents submitted by a foreign private issuer under cover of Form 6-K; and
- documents filed pursuant to section 33 of the Investment Company Act of 1940.



Updating EDGAR Filing Requirements and Form 144 Filings (cont'd)

Compliance Dates:

The amendments are effective on July 11, 2022, with the following compliance dates:

- Beginning January 11, 2023, companies must file or submit electronically the following:
 - “glossy” annual reports to security holders (in PDF),
 - notices of exempt solicitations and exempt preliminary roll-up communications, and
 - reports or other documents submitted by a foreign private issuer under cover of Form 6-K.
- Beginning six months from the date of publication in the Federal Register of the Commission release that adopts the version of the EDGAR Filer Manual addressing updates to Form 144, companies were required to file Form 144 electronically on EDGAR when the form relates to proposed sales of securities of reporting issuers.
- Beginning July 11, 2025, companies will be required to submit the financial statements and accompanying notes to the financial statements required by Form 11-K in Inline XBRL.



SEC Enforcement Actions 2022 – Overview

- On November 15th, the SEC announced that the SEC has levied \$6.4 billion in enforcement actions, including \$4 billion in penalties, in fiscal 2022
- The large number of fines, fees and penalties from about 760 enforcement actions marks a record and underscores the SEC's present aggressive posture
- The total levied is higher than the previous year's \$3.9 billion the SEC obtained from 697 actions and than 2020's record of \$4.7 billion across 715 cases
- 129 delinquent filers
- more than 2/3 of the SEC's stand-alone enforcement actions involved at least one individual defendant or respondent



SEC Enforcement Themes

- FCPA
- Earnings/revenue management
- Insider trading
- Auditor/Gatekeeper misconduct
- Fraud/Ponzi schemes
 - Crypto fraud
- Investment adviser misconduct
 - conflict of interest, excessive fees, misleading disclosure
- ESG
- Cybersecurity



Party: Chronos Group, Inc.

- Violation: Improper Accounting, Fraud
- Improper Accounting: Between 2019 and 2021 Chronos submitted financial statements with the SEC that contained material accounting errors related to revenue recognition and goodwill impairment.
- Fraud: William Hilson, former Chief Commercial Officer, entered into an undisclosed oral agreement to sell cannabis raw material and to repurchase cannabis product in the following quarter, resulting in a \$2.3 million accounting error.
- Fine amount: \$54,000



Party: Mattel Inc.

- Violation: Misstatements in financial statements
- Mattel recorded an income tax valuation allowance of \$109 million in the wrong period of 2017.
- Fine Amount: \$3.5 million



Party: Kim Kardashian

- Violation: Unlawful security offering, improper disclosure of payment
- Kardashian failed to disclose she was paid \$250,000 to publish a post on her Instagram account about EMAX tokens, the crypto asset security being offered by EthereumMax.
- Fine Amount: \$1.26 million



Party: Barclays PLC and Barclays Bank PLC

- Violation: Unregistered offer and sale of securities, misstatement of financial statements
- Barclays Bank PLC lost well-known seasoned issuer status yet continued to offer and sell \$17.7 billion worth of securities in unregistered transactions, and no internal controls were established to track them.
- Fine Amount: \$200 million (civil penalty) and \$161 million (disgorgement and prejudgment interest)



Party: 15 various broker-dealers

- Violation: Failure to maintain and preserve electronic communications
- Fine Amount: \$1.1 billion total (13 broker dealers/affiliated paid \$125 million each, 2 paid \$50 million each)
- Each party had employees conducting off-channel communication on personal devices, and the parties did not maintain or preserve these communications.



Party: Oracle Corporation

- Violation: Violation of Foreign Corrupt Practices Act
- Oracle subsidiaries in Turkey, the United Arab Emirates, and India created and used slush funds to bribe foreign officials in return for business between 2016 and 2019.
- Fine Amount: \$23 million



Party: Compass Minerals International Inc.

- Violation: Misleading investors
- Compass mislead investors about a technology upgrade, claiming it would reduce costs at its most significant mine, but in reality, had increased costs, and for failed to properly assess whether to disclose the financial risks created by the company's excessive discharge of mercury in Brazil.
- Fine Amount: \$12 million



Party: The Boeing Company

- Violation: Misleading public statements
- Following the crashes of Boeing 737 MAX airplanes in 2018 and 2019, Boeing assured the public the 737 MAX was safe when they knew a function of the plane made it unsafe, including statements regarding the certification of the Maneuvering Characteristics Augmentation System.
- Fine Amount: \$1 million



Party: Morgan Stanley

- Violation: Failure to protect personal identifying information (“PII”)
- Morgan Stanley failed to properly dispose of devices containing its customers’ PII, including failure to monitor moving of company work, and failure to hire adequate staff to decommission hard drives containing PII.
- Fine Amount: \$35 million



Party: VMWare Inc.

- Violation: Misleading investors
- VMWare delayed delivery of license keys in FY 2019 so it could recognize revenue in its following quarter, resulting in the shifting of tens of millions of dollars in revenue into future quarters.
- Fine Amount: \$8 million



Party: Granite Construction, Incorporated

- Violation: Fraud
- Former Vice President, Dale Swanberg, inflated financial performance of the major subdivision he managed, which required Granite to restate its financial statements in 2017 through 2019.
- Fine Amount: \$12 million



Party: Surgalign Holdings, Inc.

- Violation: Misleading investors
- Former executives masked disappointing sales numbers by shipping future orders ahead of schedule to pull forward revenue, then failing to disclose the practice to investors.
- Fine Amount: \$2 million



Party: Ernst & Young LLP

- Violation: Cheating on Certified Public Accountant licenses
- A significant number of EY audit professionals over the years cheated on the ethics component of CPA exams and various continuing professional education courses required to maintain CPA licenses.
- Fine Amount: \$100 million



Party: Synchronoss Technologies, Inc.

- Violation: Misleading financial statements
- Synchronoss accounted for numerous transactions improperly and thus filed with the SEC materially misleading financial statements along with having material weaknesses in its internal controls over financial reporting.
- Fine Amount: \$12.5 million



Party: Vale S.A.

- Violation: False and misleading claims
- Vale made false and misleading claims about the safety of its dams prior to the January 2019 collapse of its Brumadinho dam. The collapse killed 270 people, caused environmental and social harm, and led to a loss of more than \$4 billion in Vale's market capitalization.
- Fine Amount: Not disclosed



Questions or Comments?





Thank you!

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