

January 28, 2025

# Preparing 2024 Annual Reports on Form 20-F – Key Reminders and Considerations for FPIs

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## SUMMARY

As foreign private issuers (“FPIs”) prepare their annual reports on Form 20-F for calendar year 2024 (“2024 Form 20-F”), they should consider recent changes to the disclosure rules of the U.S. Securities and Exchange Commission (“SEC”) and the implications of certain recent developments in SEC enforcement activity and rulemaking. This memo generally assumes a fiscal year-end of December 31. Registrants with other fiscal year-ends should confirm applicable compliance dates.

Our [client alert](#) released on December 9, 2024 (the “S&C December Alert”) summarizes several of the key changes to SEC rules that will affect annual report filings this upcoming reporting season. In this memorandum, we expand on those points to address key disclosure considerations for Form 20-F filings, in particular, and set out key reminders for FPIs heading into the 2025 reporting season.<sup>1</sup>

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## EFFECTIVE DISCLOSURE RULES FOR THE 2024 FORM 20-F

The form requirements applicable to upcoming Form 20-F filings by FPIs with a calendar year-end fiscal year remain broadly unchanged for this year’s filings, save for the requirement to comply with the additional disclosure and filing requirements relating to insider trading policies and procedures under the SEC [rules](#)<sup>2</sup> adopted in December 2022.

**Insider Trading Policies.** As set out in the S&C December Alert, FPIs are now required by Item 16J of Form 20-F to disclose whether they have adopted insider trading policies and procedures governing the purchase, sale and/or other dispositions of the reporting company’s securities by directors, officers and employees. FPIs that have not adopted such policies and procedures are required to include narrative disclosure explaining why they have not done so. Finally, FPIs will be required under Item 16J(b) of Form 20-F to file their insider trading policy as an exhibit to the company’s annual report.<sup>3</sup>

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While the SEC did not specifically include in Item 16J the requirement applicable to domestic reporting companies pursuant to Item 408(b) of Regulation S-K (applicable to domestic reporting companies) to also disclose such policies and procedures of “the registrant itself,” and therefore these disclosure requirements for FPIs do not extend to policies and procedures governing transactions of the registrant itself, FPIs whose policies and procedures already cover those transactions may choose to include comparable disclosure regarding policies applicable to themselves in light of the SEC’s stated intent for FPIs to provide disclosure analogous to that required for domestic reporting companies.

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### KEY DISCLOSURE CONSIDERATIONS

In addition to recent SEC rulemaking, FPIs should consider a number of disclosure topics that continue to receive SEC and investor attention and evaluate whether their disclosures adequately address such matters.<sup>4</sup>

**Artificial Intelligence.** The SEC has become increasingly focused on disclosures and statements related to artificial intelligence (“AI”) and has warned companies against “AI washing,” *i.e.*, companies making false or misleading claims about their use of AI and AI capabilities.<sup>5</sup> The SEC has issued a number of comment letters relating to issuers’ AI-related disclosures, with the SEC repeatedly requesting clarification or additional detail from companies on the AI purportedly being used and AI-related risks. Further, recent enforcement actions taken by the SEC<sup>6</sup> indicate that FPIs should carefully consider whether their disclosures clearly, accurately and comprehensively describe how the company uses AI.

**Cybersecurity.** In July 2023, the SEC adopted rules for public companies regarding disclosure of material cybersecurity incidents, as well as cybersecurity risk management, strategy and governance, in both Form 20-F and Form 6-K, and cybersecurity-related disclosures have been a focus of recent enforcement actions by the SEC. Further information concerning recent enforcement actions taken by the SEC<sup>7</sup> in relation to failures in cybersecurity disclosure is set out in the S&C December Alert. For further details on the final rules, see our [client alert](#) released on July 28, 2023.

**Climate-Related Disclosure.** In March 2024, the SEC adopted rules (“Climate Rules”) that would require domestic reporting companies and FPIs (other than issuers eligible to report under the Multijurisdictional Disclosure System) to significantly expand the breadth, specificity and rigor of climate-related disclosures in their SEC periodic reports and registration statements.<sup>8</sup> As set out in the S&C December Alert, in April 2024, the SEC issued an order staying the Climate Rules pending judicial review, with litigation consolidated in the Eighth Circuit Court of Appeals (“Eighth Circuit”).<sup>9</sup> There is significant uncertainty regarding the timing and outcome of these legal proceedings and the SEC’s approach to the Climate Rules and climate-related disclosures in general under new SEC leadership following the change in presidential administration.

Given these uncertainties and the evolving legal and regulatory environment and market trends related to climate disclosure in general, FPIs should review and update their existing disclosures in the relevant

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sections of Form 20-F, as applicable. This is particularly relevant for FPIs that are, or may become, subject to mandatory reporting regimes outside the United States, such as the Corporate Sustainability Reporting Directive in the European Union and/or the sustainability disclosure standards relating to sustainability- and climate-related risks and opportunities released by the International Sustainability Standards Board.

***Non-GAAP Financial Measures.*** The SEC continues to comment on companies' use of non-GAAP financial measures (including non-IFRS measures) and compliance with related disclosure requirements. We expect this to be a continued focus of the SEC in 2025. Companies should review their use and disclosure of non-GAAP financial measures to ensure compliance with the relevant SEC rules and guidance, including the updated [Compliance and Disclosure Interpretations](#) published by the SEC in December 2022. Of particular focus by the SEC are practices such as the improper characterization of recurring or "normal" operating expenses as non-recurring or extraordinary, lack of clear disclosure regarding the adjustments, greater prominence of non-GAAP financial measures, revenue adjustments and failure to label non-GAAP measures as such. Recent enforcement actions also reflect the SEC's focus on companies' disclosure controls and procedures with respect to the disclosure of non-GAAP financial measures.<sup>10</sup>

***Segment Reporting for FPIs Reporting in U.S. GAAP.*** In November 2023, the Financial Accounting Standards Board ("FASB") issued a final Accounting Standards Update ("ASU") relating to disclosures about the reportable segments of registrants. The ASU requires FPIs reporting in U.S. GAAP (that are required to report segment information in accordance with Topic 280) to report segment information in accordance with the new U.S. GAAP guidance. The amendment and a summary of the required changes are available on the FASB's website.<sup>11</sup>

***People's Republic of China-Specific Disclosures.*** In July 2023, the SEC published a [Sample Letter to Companies Regarding China-Specific Disclosures](#), which contains sample comments that should be considered by companies based in or with a majority of their operations in the People's Republic of China ("PRC"). For further details on the sample letter, see our [client memo](#) published on December 14, 2023. Given the SEC's continued focus, companies should review their filings to confirm they comply with all China-specific reporting requirements.

***Geopolitical Events.*** As the conflicts in the Middle East and the conflict between Russia and Ukraine continue, companies should continue to evaluate, with a view towards potential disclosure, the direct and indirect impacts on their businesses and operations of geopolitical events and the related international responses, especially with regard to operations in the affected regions, supply chain issues, human capital and workforce matters, and future business prospects.<sup>12</sup>

***Impacts of Inflationary and Interest Rate Environment.*** While inflationary pressures in many countries have eased, the SEC has continued to scrutinize the level of detail in disclosures relating to inflation. FPIs

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should consider whether their disclosures regarding inflationary impacts and risks relating to high interest rates are adequate.

**Refresh Risk Factors.** FPIs should review their risk factors to ensure that the company’s material risks are appropriately identified and disclosed, including risks relating to recent developments, such as the adoption of artificial intelligence, cybersecurity, extreme weather events and geopolitical events.

**Consistency Between SEC Filings and Other Public Statements.** The SEC has recently increased its focus on consistency between information presented in public companies’ filed disclosure and statements made to investors as part of periodic earnings calls and other forums (such as on the company’s website). In particular, the SEC has required companies to explain inconsistencies between the description of company strategies, revenues, and key performance indicators, among other matters. FPIs should therefore be mindful as to whether the disclosures in their 2024 Forms 20-F capture all material information that the company presents with respect to its results and ensure consistency.

**Board Diversity Disclosure.** On December 11, 2024, the Court of Appeals for the Fifth Circuit struck down the Nasdaq rules that would have required Nasdaq-listed companies to report certain board of director diversity statistics, and to have, or explain why they do not have, at least two directors considered diverse under Nasdaq’s rules. While these rules have been vacated, FPIs should consider whether investors may nevertheless expect to see disclosure relating to board and broader organizational diversity.

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## PROCEDURAL UPDATES AND REMINDERS

**Inline XBRL Tagging.** The SEC continues to expand the scope of disclosures that require eXtensible Business Reporting Language (“XBRL”) and Inline XBRL tagging. Registrants are reminded that the following recently-adopted rules require XBRL tagging.

- **Insider Trading Policies.** The disclosures required by Item 16J of Form 20-F relating to insider trading policies and procedures must be tagged in Inline XBRL.
- **Cybersecurity Disclosures.** Inline XBRL tagging for cybersecurity disclosures has been required from December 15, 2024, meaning that FPIs will need to ensure that cybersecurity disclosure in their 2024 Forms 20-F and, if applicable, incident reports under Form 6-K are appropriately tagged.

FPIs should refer to the [Sample Letter to Companies Regarding Their XBRL Disclosures](#) published by the SEC and most recently updated in June 2024 for sample comments relating to XBRL and Inline XBRL disclosure obligations that FPIs should consider when preparing their 2024 Form 20-F, and build in sufficient time to address any related tagging requirements.

**EDGAR Next.** On September 27, 2024, the SEC adopted rule and form amendments to improve security and management of accounts on its EDGAR system that are related to certain technical changes to EDGAR (collectively referred to as “EDGAR Next”). EDGAR Next will require individual account credentials for authorized individuals to access EDGAR accounts and make filings.

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The EDGAR Next dashboard goes live on March 24, 2025, and FPIs can enroll in the EDGAR Next system from that date using their current access codes. As such, FPIs filing their 2024 Forms 20-F following that date may elect to do so using the EDGAR Next system (including their new login credentials), but may continue to use the existing system until September 12, 2025. Beginning on September 15, 2025, all filings are required to be made through the EDGAR Next system.

Further details on the EDGAR Next system can be found in the SEC's published [infographic](#) and on the [SEC website](#).

***T+1 Settlement Cycle.*** The SEC adopted an amendment to Exchange Act Rule 15c6-1 to shorten the standard settlement cycle for most securities transactions effected by a broker-dealer from two business days after the trade date ("T+2") to one business day after the trade date ("T+1"). The T+1 settlement cycle became effective on May 28, 2024. FPIs should consider the potential impact of different settlement cycles between the United States and foreign markets (e.g., in relation to setting record dates in relation to dividends).

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## CONCLUSION

The topics addressed above discuss recent rule changes and the implications of certain recent developments in SEC enforcement activity and rulemaking that FPIs should consider as they prepare their 2024 Forms 20-F. However, each company's disclosure is unique and therefore needs to be tailored to its particular facts and circumstances. Given the rapidly changing environment, companies should start preparing their disclosures early and should review them closer to their filing date to consider whether any further updates are needed, taking into account, among other factors, changes in the companies' performance and industry, as well as evolving disclosure requirements, recent developments and investor expectations.

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## ENDNOTES

- 1 This memorandum generally assumes that a registrant has a calendar year-end. Non-calendar year-end filers should confirm their applicable compliance dates.
- 2 See “Insider Trading Arrangements and Related Disclosures,” SEC Release Nos. 33-11138; 34-96492; File No. S7-20-21 (December 14, 2022), *available at* <https://www.sec.gov/files/rules/final/2022/33-11138.pdf>. For further information, see our Client Memorandum: “SEC Adopts New Requirements for Rule 10b5-1 Trading Plans” (December 16, 2022), *available at* <https://www.sullcrom.com/insights/memo/2022/December/SEC-Adopts-New-Requirements-for-Rule-10b51-Trading-Plans-New-Rules-Impose-Procedural-Substantive-and-Disclosure-Requirements-for>.
- 3 Alternatively, if a reporting company’s insider trading policies and procedures are included as part of the reporting company’s code of ethics, and the code of ethics is filed as part of the reporting company’s Form 20-F pursuant to Item 16B of Form 20-F, that filing would satisfy the new requirement.
- 4 This is not an exhaustive list of topics that are subject to increased scrutiny by the SEC.
- 5 See Office Hours with Gary Gensler Transcript: AI, Chair Gary Gensler (February 14, 2024) *available at* <https://www.sec.gov/news/video-transcript/office-hours-gary-gensler-transcript-ai>; AI, Finance, Movie, and the Law, Chair Gary Gensler (February 13, 2024), *available at* <https://www.sec.gov/news/speech/gensler-ai-021324>; SEC Chair Warns Businesses Against AI Washing: ‘Don’t Do It,’ Hailey Konnath, Law360 (Dec. 5, 2023), *available at* <https://www.law360.com/securities/articles/1773759/sec-chair-warns-businesses-against-ai-washing-don-t-do-it->.
- 6 See SEC Charges Founder of AI Hiring Startup Joonko with Fraud (June 11, 2024), *available at* <https://www.sec.gov/newsroom/press-releases/2024-70>; SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence, SEC Press Release (March 18, 2024), *available at* [https://www.sec.gov/news/press-release/2024-36?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/news/press-release/2024-36?utm_medium=email&utm_source=govdelivery).
- 7 See “SEC Charges Four Companies With Misleading Cyber Disclosures” (October 22, 2024), *available at* <https://www.sec.gov/newsroom/press-releases/2024-174>.
- 8 See “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” SEC Release Nos. 33-11275; 34-99678; File No. S7-10-22 (March 6, 2024), *available at* <https://www.sec.gov/files/rules/final/2024/33-11275.pdf>. For further information, see our Client Memorandum: “SEC Adopts Final Climate-Related Disclosure Rules for Public Companies” (March 7, 2024), *available at* <https://www.sullcrom.com/SullivanCromwell/Assets/PDFs/Memos/SEC-Adopts-Final-Climate-Related-Disclosure-Rules-Public-Companies.pdf>.
- 9 See “Order Issuing Stay,” SEC Release Nos. 33-11280; 34-99980; File No. S7-10-22 (April 4, 2024), *available at* <https://www.sec.gov/files/rules/other/2024/33-11280.pdf>. For further information, see our Client Memorandum: “SEC Stays Climate-Related Disclosure Rules for Public Companies Pending Judicial Review” (April 5, 2024), *available at* <https://www.sullcrom.com/SullivanCromwell/Assets/PDFs/Memos/SEC-Stays-Climate-Related-Disclosure-Rules.pdf>.
- 10 See “SEC Charges Newell Brands and Former CEO for Misleading Investors About Sales Performance” (September 29, 2023), *available at* <https://www.sec.gov/newsroom/press-releases/2023-210>; “SEC Charges IT Services Provider DXC Technology Co. for Misleading Non-GAAP Disclosures” (March 14, 2023), *available at* <https://www.sec.gov/newsroom/press-releases/2023-49>.
- 11 See <https://fasb.org/page/ShowPdf?path=ASU%202023-07.pdf&title=ACCOUNTING%20STANDARDS%20UPDATE%202023->

ENDNOTES (CONTINUED)

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[07%E2%80%94Segment%20Reporting%20\(Topic%20280\):%20Improvements%20to%20Reportable%20Segmen.](#)

- <sup>12</sup> For further information, see “Sample Letter to Companies Regarding Disclosures Pertaining to Russia’s Invasion of Ukraine and Related Supply Chain Issues” (May 2022), *available at* <https://www.sec.gov/corpfin/sample-letter-companies-pertaining-to-ukraine>.

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