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Key Considerations for Fiscal Year 2020 Form 10-K and 20-F Filings

Disclosure Trends and Form Considerations for Issuers Preparing Filings for Fiscal Year 2020

SUMMARY

As issuers prepare their Form 10-K and 20-F filings for fiscal year 2020, they should consider recent and upcoming changes to the disclosure rules of the Securities and Exchange Commission (“SEC”) and trending disclosure topics. This memorandum summarizes several of those disclosure considerations and highlights the key changes to SEC rules that will affect Form 10-K and 20-F filings this upcoming reporting season.¹

GENERAL DISCLOSURE TRENDS

As issuers prepare their annual SEC reports, they should consider a number of disclosure topics that continued to receive SEC and investor attention over the past year. Although some issuers may not need to make changes at this time, all issuers should evaluate whether their disclosures adequately address these topics. Issuers should also consider whether other issues that have received increasing attention present material risks that should be discussed, such as the misuse of customer data or exposure to government investigations and related liabilities.

COVID-19 Disclosure. In March and June 2020, the SEC issued guidance for reporting on the impact of the COVID-19 pandemic and related business and market disruptions.² The guidance encourages companies to address the impact of COVID-19 on their business and financial condition, including liquidity and capital resources, and include questions that issuers should consider when assessing the effects of COVID-19.³ Importantly, the SEC staff indicated that disclosures should enable an investor to understand how management and the board of directors are analyzing the current and expected impacts of COVID-19

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and be updated as facts and circumstances change. In preparing Form 10-K or 20-F filings, issuers should consider such topics as:

- the impact and expected future impact of COVID-19 on their financial condition, results of operations, capital and financial resources and liquidity;
- any material operational challenges that management is monitoring and evaluating and the extent their operations have been altered to deal with any such challenges;
- any material impairments, increases in allowances for credit losses or restructuring charges and whether any material changes to their accounting judgments are anticipated;
- any challenges in implementing their business continuity plans;
- any material effects on demand for their products or services;
- any material impacts on their supply chains or distribution channels;
- any inability to access traditional funding sources on the same or reasonably similar terms as were available prior to COVID-19;
- any risk of not meeting covenants in any credit or other agreements;
- the ability to timely service their debt and other obligations; and
- any changes to terms with their customers, such as extended payment terms or concessions.

In addition, on April 3, 2020, the Office of the Chief Accountant of the SEC (the “OCA”) issued a statement regarding the importance of high-quality financial reporting in light of the impacts of COVID-19⁴ and, on June 23, 2020, the SEC Chief Accountant issued a statement highlighting some of the significant accounting, auditing and financial reporting issues related to COVID-19 addressed by the OCA.⁵ In its statement, the OCA highlighted the following in connection with financial reporting:

- *Significant Estimates and Judgments:* Where issuers have made significant judgments and estimates to address accounting and reporting matters, the OCA will continue to not object to well-reasoned judgments made by issuers. Issuers should ensure that significant judgments and estimates are disclosed in a manner that is understandable and useful to investors and that the resulting financial reporting reflects the issuer’s facts and circumstances.
- *Disclosure Controls and Procedures and Internal Control over Financial Reporting:* If a change materially affects, or is reasonably likely to materially affect, an issuer’s internal control over financial reporting, it must be disclosed in the annual report for the fiscal year in which it occurred.
- *Vital Role of Audit Committees:* The OCA reiterated the key role that audit committees play through their oversight of their companies’ financial reporting, including internal control over financial reporting and the external, independent audit process. The OCA stressed that, in times of rapid change and increased uncertainty, the need for the oversight role that audit committees play is as critical as ever.

In December 2020, the SEC settled charges against The Cheesecake Factory Incorporated for making misleading disclosures about the impact of COVID-19 on its business operations and financial condition.⁶ As noted in the SEC’s order, The Cheesecake Factory had stated publicly that its restaurants were “operating sustainably” during the COVID-19 pandemic, and, according to the order, the company’s SEC filings were materially false and misleading because internal documents at the time showed that the

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company was losing approximately \$6 million in cash per week and that it projected that it had only 16 weeks of cash remaining. This settlement highlights the importance to companies of carefully considering their disclosure regarding the impacts of COVID-19 on their businesses and financial condition, including liquidity and capital resources.

LIBOR Transition. Financial regulators, industry groups and companies continue to work on transition efforts in connection with the anticipated discontinuation of the London Interbank Offered Rate (“LIBOR”). On November 30, 2020, the Federal Reserve Board, Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency issued a joint statement⁷ encouraging banks to cease entering into new contracts that use USD LIBOR as a reference rate as soon as practicable and in any event by December 31, 2021, in order to facilitate an orderly—and safe and sound—LIBOR transition. Further, the Intercontinental Exchange Benchmark Administration, the administrator of LIBOR regulated and authorized by the United Kingdom’s Financial Conduct Authority, announced⁸ that it will consult on when to end the publication of various USD LIBOR tenors, and, if adopted, that these proposed plans would cease the major USD LIBOR tenors (i.e., overnight, one-month, three-month, six-month and twelve-month) in mid-2023, and the one-week and two-month USD LIBOR settings at the end of 2021.⁹

SEC statements¹⁰ remind issuers that LIBOR transition remains a focus for the SEC and issuers should continue to assess their LIBOR exposure and keep investors informed about the progress towards risk identification and mitigation and the anticipated impact.

Brexit. On December 24, 2020, the European Union and the United Kingdom agreed on the final terms of a trade and cooperation agreement relating to their relationship following the United Kingdom’s withdrawal from the European Union (“Brexit”). This trade and cooperation agreement covers, among other things, tariffs and quotas on goods, labor and social standards, environmental protection matters, tax transparency and customs provisions.¹¹

In light of the SEC staff’s ongoing focus on the need for more robust disclosure of the potential business and operational impacts of Brexit, issuers should continue to consider whether updates to their Brexit disclosures are warranted, particularly the risks and potential effects associated with Brexit. To the extent an issuer has developed plans or adjusted its business and operations in light of Brexit, it should also consider the extent to which such plans will be affected by the terms of the trade and cooperation agreement. Importantly, the SEC staff has also indicated¹² that issuers should aim to tailor disclosure regarding the impact of Brexit to their particular situations and avoid generic disclosures that do not give a clear indication of the anticipated or possible effects of Brexit on their businesses and operations.

Tariffs and Global Trade Uncertainties. As trade tensions among a number of the world’s major economies continue to develop, issuers that face risks associated with effects and potential effects of tariffs and global trade uncertainties should review their risk factors and management’s discussion and analysis

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of financial condition and results of operations (“MD&A”) to ensure that the disclosure appropriately addresses these risks.

Emerging Markets Risk Disclosure. In April 2020, the Chairmen of the SEC and the U.S. Public Company Accounting Oversight Board (the “PCAOB”) and members of the SEC staff issued a public statement¹³ highlighting that issuers with operations in emerging markets often face greater risks and uncertainties than in more established markets. They stated that these issuers should clearly disclose those risks and uncertainties to investors. They also emphasized that such risks and uncertainties are industry- and jurisdiction-specific and boilerplate disclosures are generally not useful or sufficient. These potentially unique operating considerations should also be considered and reflected in financial and operational disclosures more generally, including disclosures of material risks, trends, uncertainties, accounting judgments and other items that are material to investors.

Environmental and Climate-Related Disclosure. Environmental and climate-related disclosures continue to receive attention from the SEC. In a January 2020 statement, then SEC Chairman, Jay Clayton, emphasized the importance of such disclosure and that it should remain rooted in materiality, including providing investors with insight regarding an issuer’s assessment of, and plans for addressing, material risks to its business and operations.¹⁴ It is worth noting that this principles-based approach to disclosure of environmental and climate-related risks has been criticized by SEC Commissioners Lee and Crenshaw, who in a joint dissenting statement in November 2020¹⁵ emphasized the importance of standardized disclosure requirements that would facilitate efficient comparisons of how companies manage such risks and assets. The SEC’s focus on environmental and climate-related disclosure is expected to continue to evolve during 2021 and beyond. In particular, due to the change in the presidential administration, the topic may receive additional attention from the SEC.

Sanctions Disclosure. The Treasury Department’s Office of Foreign Assets Control (“OFAC”) continues to administer and enforce comprehensive sanctions with respect to Cuba, Iran, North Korea, Syria and the Crimea region of Ukraine, as well as against targeted individuals and entities involved in narcotics trafficking, terrorism and terrorist financing, transnational crime, proliferation of weapons of mass destruction, malicious cyber activities and election interference, corruption and human rights abuses. In addition, former President Trump issued an executive order in November 2020 introducing certain restrictions on transactions involving publicly traded securities of identified communist Chinese military companies. These restrictions became effective on January 12, 2021.¹⁶ To the extent an issuer has business in sanctioned countries (even if permissible without violating applicable U.S. law) or with identified entities, it should consider whether disclosure of such activities is appropriate.

Cybersecurity Disclosure. The SEC considers that cybersecurity matters remain a key area of risk for public companies, and has increased its focus on the topic over the past two years. The SEC staff continues to review and comment on cybersecurity-related disclosures as part of its regular reviews of filings, including

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those relating to board risk oversight, the issuer's disclosure controls and procedures and insider trading policies. The SEC staff also monitors news reports of cyber breaches to assist in this process.

The SEC expects issuers to provide cybersecurity disclosure that is "tailored to their particular cybersecurity risks and incidents" and "emphasize[s] a company-by-company approach that allows relevant and material information to be disseminated to investors without boilerplate language or static requirements while preserving completeness and comparability of information across companies." Key areas of focus for issuers include risk factors related to the potential harm of cybersecurity incidents to their business, disclosure about cybersecurity controls and procedures, and discussion in the MD&A where cybersecurity events or compliance costs have had or are expected to have a material effect on the issuer's financial condition or results of operations. Issuers should also consider risks relating to incident response, as well as whether changes in their business and operations—such as entering into new lines of business or changing business processes or practices—could have a material effect on their risk exposure to cybersecurity incidents.

SEC Scrutiny of Non-GAAP Financial and Other Performance Measures. The SEC continues to focus on non-GAAP financial reporting, use of other performance measures and compliance with the SEC staff's interpretive guidance. The impact of COVID-19 has reaffirmed this focus and the SEC guidance for reporting on the impact of COVID-19 has expressly commented on non-GAAP adjustments related to the effects of COVID-19, highlighting that to the extent that an issuer presents a non-GAAP financial measure or performance metric to adjust or explain the impact of COVID-19, it should highlight why management finds the measure or metric useful and how it helps investors assess the impact of COVID-19 on the issuer's financial position and results of operation. Further, the SEC has indicated that it is not appropriate for an issuer to present non-GAAP financial measures or metrics for the sole purpose of presenting a more favorable view of the issuer.¹⁷

In addition, on January 30, 2020, the SEC provided guidance reminding issuers to accurately define and disclose any metrics and include such further material information as may be necessary in order to make the presentation of any metric, in light of the circumstances under which it is presented, not misleading.¹⁸ Based on the facts and circumstances, any metric should be accompanied with a clear definition and how it is calculated, a statement indicating the reasons why the metric provides useful information to investors and a statement indicating how management uses the metric in the management or monitoring of company performance. The guidance also advises issuers to consider whether they have effective controls and procedures for such metrics. Further, the guidance notes that if an issuer has changed the method by which it calculates or presents a metric, it should disclose, to the extent material:

- the differences in the way the metric is calculated or presented compared to prior periods;
- the reasons for such changes;

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- the effects of any such change on the amounts or other information being disclosed and on amounts or other information previously reported; and
- such other differences in methodology and results that would reasonably be expected to be relevant to an understanding of the issuer's performance or prospects.

SEC FORM UPDATES

This memorandum does not cover all changes made to the SEC's forms and disclosure requirements, but rather focuses on key provisions applicable to corporate issuers as they prepare their Form 10-K and 20-F filings for fiscal year 2020.

On August 26, 2020, the SEC adopted amendments¹⁹ to the business, legal proceedings and risk factor disclosure requirements of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act").²⁰ The following amendments became effective on November 9, 2020:

- **Business (Items 101(a) and (c)).** The amendments eliminate the specific five-year timeframe for disclosure regarding the general development of an issuer's business and instead require a discussion of the general development of the business, with no prescribed timeframe. After their initial registration statement, issuers are permitted to provide only an update that focuses on material developments since the last full discussion, along with a hyperlink to the most recent filing containing the full discussion. In addition, Items 101(a)(1) and 101(c) have been amended to include some of the types of information that an issuer may need to disclose. With respect to human capital, Item 101(c) requires an issuer to include, to the extent material to an understanding of its business, a description of the issuer's human capital resources, including the number of employees and any human capital measures or objectives that the issuer focuses on in managing its business, such as measures or objectives that address the development, attraction and retention of personnel.
- **Legal Proceedings (Item 103).** The amendments permit disclosure regarding material legal proceedings to be provided by including hyperlinks or cross-references to legal proceedings information included elsewhere in the document (e.g., in the notes to the financial statements) in order to avoid duplicative disclosure. The amendments also update the threshold for disclosure of environmental proceedings to which the government is a party from \$100,000 to \$300,000.
- **Risk Factors (Item 105).** The amendments change the disclosure standard from requiring disclosure of the "most significant" risk factors to requiring disclosure of "material" risk factors. The amendments also require risk factors to be organized with relevant headings. Finally, if the risk factor section exceeds 15 pages, issuers must include a concise summary (not to exceed two pages) of the principal factors that make an investment in the issuer or offering speculative or risky.²¹ The amendments continue to discourage the presentation of generic risk factors and require that, to the extent risk factors that apply generically to any issuer or offering are presented, those risk factors should be disclosed under a separate heading at the end of the risk factors section.

The amendments to Items 101 and 103 of Regulation S-K do not apply to foreign private issuers ("FPIs"), unless they have chosen to register their securities on a domestic registration form. The amendments to Item 105 of Regulation S-K do not apply to FPIs, unless a form reserved for FPIs (such as Securities Act Form F-1, F-3 or F-4) specifically refers to Regulation S-K.

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On November 19, 2020, the SEC adopted amendments²² to modernize, simplify and enhance disclosure requirements in Regulation S-K. For calendar-year registrants, the new disclosure rules will apply to annual reports for the year ending December 31, 2021.²³ Prior to the mandatory compliance date, issuers may voluntarily elect to provide disclosure consistent with the new disclosure rules, so long as they provide disclosure responsive to an item in its entirety. While the amendments address multiple items of Regulation S-K and related rules, of particular note are the following:

- ***Selected Financial Data (Item 301)***. Issuers will no longer be required to provide five years of selected financial data.
- ***Selected Quarterly Financial Data (Item 302(a))***. Issuers will no longer be required to provide tabular disclosure of two years of selected quarterly financial data. The amendments include a streamlined requirement to disclose material retrospective changes that pertain to the income statement for any of the quarters within the issuer's two most recent fiscal years and any subsequent interim period. In addition, issuers will also be required to provide an explanation of the reasons for the changes and to disclose summarized financial information for the income statement and earnings per share reflecting the changes.
- ***Tabular disclosure of contractual obligations (Item 303(a)(5))***. Issuers will no longer be required to provide a contractual obligations table given the amended disclosure requirements for liquidity and capital resources and certain overlap with information required in the financial statements, and to promote the principles-based nature of the MD&A.
- ***MD&A (Item 303)***. The amendments include changes intended to modernize, simplify and enhance the disclosure requirements of Item 303. Specifically, the amendments, among other matters: (i) highlight that the general purpose of the MD&A disclosure is to provide both historical and prospective analysis of the issuer's financial condition and results of operations, with particular emphasis on the issuer's prospects for the future; (ii) introduce a principles-based instruction to discuss off-balance sheet arrangements in the broader context of the MD&A; (iii) codify existing SEC guidance on critical accounting estimates disclosure; and (iv) revise the interim MD&A requirement to provide flexibility by allowing issuers to compare the results of operations for their most recently completed quarter to either the corresponding quarter of the prior year or to the immediately preceding quarter.

The SEC also adopted certain corresponding amendments that will apply to FPIs providing disclosure required by Form 20-F, including eliminating the requirement to provide five years of selected financial data by deleting Item 3.A of Form 20-F and the related instructions and amending Item 5 of Form 20-F to ensure that MD&A requirements for FPIs continue to mirror the substantive MD&A requirements in Item 303 of Regulation S-K. Certain corresponding amendments will also apply to eligible Canadian FPIs providing disclosure required by Form 40-F that use Canadian disclosure documents to satisfy the SEC's registration and disclosure requirements.

In addition, as issuers prepare their Form 10-K and 20-F filings for fiscal year 2020, they should also consider the following rules amendments:

- ***Changes to Financial Disclosures Relating to Acquisitions and Dispositions***. On May 20, 2020, the SEC adopted amendments to the financial disclosure requirements for financial statements of businesses acquired or to be acquired and for business dispositions.²⁴ Among other changes, the amendments modify the "significance" tests under Rules 1-02(w) and 11-01 of

Regulation S-X by revising the “investment test” and “income test” and expand the use of pro forma financial information in determining “significance” under the rules.²⁵ The amendments apply to issuers for fiscal years beginning after December 31, 2020, and voluntary early adoption is permitted.

- **Confidential Treatment Requests.** Issuers who submitted confidential treatment applications pursuant to Rule 406 under the Securities Act or Rule 24b-2 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and obtained a confidential treatment order from the SEC, now have three options of what to do when the order is about to expire: (i) refile the unredacted exhibit if the information no longer needs to be protected from public disclosure; (ii) extend the confidential period by filing an application under Rule 406 or Rule 24b-2 to continue to protect the confidential information; or (iii) transition to the rules governing the filing of redacted exhibits under Item 601(b)(10)(iv) of Regulation S-K.
- **Cover Page Requirements.** Issuers are now required to indicate on the cover page of any Form 10-K, 20-F or 40-F filing whether they have filed a report on and attestation to its management’s assessment of the effectiveness of their internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act by the registered public accounting firm that prepared or issued their audit report.
- **Use of Electronic Signatures.** Issuers are now permitted to electronically execute, as an alternative to manually signing, an authentication document in connection with an EDGAR filing so long as the procedural requirements set forth in the EDGAR Filer Manual are met.²⁶

ADDITIONAL CONSIDERATIONS FOR THE FISCAL YEAR 2020 REPORTING SEASON AND BEYOND

Additional topics that issuers should consider as they prepare filings for this year and beyond:

- **XBRL Updates.** Many issuers have already started making changes in their machine-readable eXtensible Business Reporting Language (“XBRL”) to comply with the new requirements for the use of Inline XBRL for operating company financial statement information and fund risk/return summary information.²⁷ In August 2019, the SEC published Compliance and Disclosure Interpretations relating to the XBRL amendments.²⁸ It is worth noting that, while large accelerated filers using U.S. GAAP are already required to comply with the XBRL amendments, in accordance with the phased-in compliance period, accelerated filers that prepare financial statements in accordance with U.S. GAAP are required to comply with the XBRL amendments for fiscal periods ending on or after June 15, 2020, while all other filers, including FPIs that prepare financial statements in accordance with the International Financial Reporting Standards as adopted by the International Accounting Standards Board, will be required to comply with the XBRL amendments for fiscal periods ending on or after June 15, 2021.
- **Modernization of Disclosure for Registered Mining Companies.** In 2018, the SEC adopted amendments to Regulation S-K disclosure requirements that rescind Industry Guide 7, *Description of Property by Issuers Engaged or to be Engaged in Significant Mining Operations*, and consolidate and codify the new disclosure requirements in Subpart 1300 of Regulation S-K.²⁹ Following a two-year transition period, issuers with material mining operations are required to comply with the new disclosure requirements beginning with their first fiscal year beginning on or after January 1, 2021.
- **Financial Disclosure Requirements About Issuers and Guarantors of Guaranteed Securities Simplified and Streamlined.** On March 2, 2020, the SEC adopted amendments³⁰ to the financial disclosure requirements for guarantors, issuers of guaranteed securities and affiliates whose securities collateralize a registrant’s securities. The amendments revise Rules 3-10 and 3-16 of Regulation S-X and relocate part of Rule 3-10 and all of Rule 3-16 to a new Article 13 in Regulation S-X.³¹ The amendments became effective on January 4, 2021 and, with respect to Exchange Act periodic reports, generally apply for periods ending on or after January 4, 2021. Voluntary

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compliance is permitted. As issuers begin to implement the amended disclosure requirements, they should consider in particular:

- preparing the required supplemental financial and non-financial disclosure about any subsidiaries of the issuer and/or guarantors and the guarantees;
 - how to present the exclusion of non-issuer and non-guarantor subsidiaries from the summarized financial information pursuant to Rule 13-01(a)(4); and
 - the location of the amended disclosure—whether to provide the disclosure inside of the audited or unaudited interim financial statements (subject to annual audit, interim review, internal control over financial reporting requirements and XBRL tagging requirements), as the case may be, or in the MD&A.
- ***Update and Expansion of Statistical Disclosure Requirements for Banking Registrants.*** On September 11, 2020, the SEC adopted rules³² that update and expand the statistical disclosures that bank holding companies, banks, savings and loan holding companies, and savings and loan associations provide to investors. The rules rescind Industry Guide 3, *Statistical Disclosure by Bank Holding Companies*, and codify the updated disclosure requirements in a new Subpart 1400 of Regulation S-K.³³ Registrants will be required to apply the updated disclosure requirements for their first fiscal year ending on or after December 15, 2021.
 - ***Revised Rules to Implement “Resource Payments” Disclosure Requirements of the Dodd-Frank Act.*** On December 16, 2020, the SEC adopted rules³⁴ under the Exchange Act that would require issuers that file annual reports on Form 10-K, 20-F or 40-F and that engage in the commercial development of oil, natural gas or minerals to provide disclosure on an annual basis of any payment made during the fiscal year to a foreign government or the U.S. federal government for the purposes of the commercial development of oil, natural gas or minerals, subject to certain exemptions.³⁵ The SEC has adopted a two-year transition period. For calendar-year registrants, the rules will apply beginning with the fiscal year ending December 31, 2023.
 - ***Nasdaq Proposes Board Diversity Requirements.*** On December 1, 2020, Nasdaq submitted new proposed listing rules to the SEC regarding board diversity.³⁶ If approved by the SEC, the proposed rules would, among other things, require listed companies to have at least one director who self-identifies as female and at least one director who self-identifies as an underrepresented minority or as LGBTQ+,³⁷ subject to certain exemptions, or explain why the company does not satisfy the requirement. In addition, the rules would require public disclosure of the number of directors who voluntarily self-identify as female, male or non-binary and who voluntarily self-identify as an underrepresented minority or as LGBTQ+.³⁸ If approved by the SEC, Nasdaq-listed companies would have two years to have at least one diverse director, four to five years to meet the diversity requirements and one year to meet the diversity disclosure requirements.

The topics reviewed above reflect amendments and trends that have developed over the past year, as well as public statements from officials and staff at the SEC, that issuers should consider as they prepare for the Form 10-K and 20-F reporting season. However, each issuer's disclosure is unique, and therefore needs to be tailored to its particular facts and circumstances.

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ENDNOTES

- ¹ For information on changes affecting the upcoming and future U.S. proxy seasons, see our Client Memoranda: “SEC Adopts New Rules for Proxy Advisors and Provides Supplemental Guidance on Voting Responsibilities of Investment Advisers: Proxy Advisors Required to Provide Notice of Company Responses to Recommendations and Comprehensive Disclosure of Conflicts of Interest” (July 28, 2020), *available at* <https://www.sullcrom.com/sc-publication-new-rules-proxy-advisors-guidance-investment-advisers>; “SEC Modernizes Shareholder Proposal Requirements: New Rule Finalizes More Stringent Minimum Shareholding and Resubmission Requirements for Shareholder Proposals and Will Be Effective for 2022 Proxy Season” (September 30, 2020), *available at* <https://www.sullcrom.com/sc-publication-SEC-modernizes-shareholder-proposal-requirements>.
- ² SEC Division of Corporation Finance, “CF Disclosure Guidance: Topic No. 9” (March 25, 2020), *available at* <https://www.sec.gov/corpfin/coronavirus-covid-19>; SEC Division of Corporation Finance, “CF Disclosure Guidance: Topic 9A” (June 23, 2020), *available at* <https://www.sec.gov/corpfin/covid-19-disclosure-considerations>.
- ³ For further information, see our Client Memoranda: “SEC Issues COVID-19 Disclosure Guidance and Extends Conditional Relief from Reporting Requirements: Staff Provides Guidance for Reporting on the Impact of the COVID-19 Crisis and Issues New Orders Extending Relief for Public Companies, Investment Funds and Investment Advisers” (March 30, 2020), *available at* <https://www.sullcrom.com/sec-issues-covid-19-disclosure-guidance-and-extends-conditional-relief>; “SEC Issues Additional COVID-19 Disclosure Guidance: Division of Corporation Finance Provides Additional Disclosure Guidance for Reporting on the Impact of COVID-19 and the Office of the Chief Accountant Issues Statement on the Importance of High-Quality Financial Reporting in Light of COVID-19” (June 25, 2020), *available at* <https://www.sullcrom.com/sc-publication-sec-issues-additional-covid-19-disclosure-guidance>.
- ⁴ SEC Chief Accountant Sagar Teotia, “Statement on the Importance of High-Quality Financial Reporting in Light of the Significant Impacts of COVID-19” (April 3, 2020), *available at* <https://www.sec.gov/news/public-statement/statement-teotia-financial-reporting-covid-19-2020-04-03>.
- ⁵ SEC Chief Accountant Sagar Teotia, “Statement on the Continued Importance of High-Quality Financial Reporting for Investors in Light of COVID-19” (June 23, 2020), *available at* <https://www.sec.gov/news/public-statement/teotia-financial-reporting-covid-19-2020-06-23>.
- ⁶ “SEC Charges The Cheesecake Factory For Misleading COVID-19 Disclosures” (December 4, 2020), *available at* <https://www.sec.gov/news/press-release/2020-306>.
- ⁷ “Agencies issue statement on LIBOR transition” (November 30, 2020), *available at* <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201130a.htm>.
- ⁸ “ICE Benchmark Administration to Consult on Its Intention to Cease the Publication of One Week and Two Month USD LIBOR Settings at End-December 2021, and the Remaining USD LIBOR Settings at End June 2023” (November 30, 2020), *available at* https://s2.q4cdn.com/154085107/files/doc_news/ICE-Benchmark-Administration-to-Consult-on-Its-Intention-to-Cease-the-Publication-of-One-Week-and-Two-Month-USD-LIBOR-Settings-at-End-ELPZZ.pdf.
- ⁹ For further information, see our Client Memorandum: “LIBOR Transition: LIBOR Benchmark Administrator Proposes Extending Publication of Widely Used USD LIBOR Settings to June 30, 2023; Federal Banking Agencies Issue Guidance that Banks Should Generally Cease Entering Into New Contracts Referencing USD LIBOR by End of 2021, and Observes the Extended Date Will Facilitate the Roll-Off of Legacy Contracts” (December 1, 2020), *available at* <https://www.sullcrom.com/sc-publication-LIBOR-transition-2020>.
- ¹⁰ SEC Chairman Jay Clayton, “Statement on Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the

ENDNOTES (CONTINUED)

- Coronavirus; Environmental and Climate-Related Disclosure” (January 30, 2020), *available at* <https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30>.
- 11 For further information, see our Client Memorandum: “What Does Brexit Mean for You?” (December 28, 2020), *available at* <https://www.sullcrom.com/files/upload/sc-publication-what-does-brexit-mean-for-you.pdf>.
- 12 William Hinman, Director, Division of Corporation Finance, “Applying a Principles-Based Approach to Disclosing Complex, Uncertain and Evolving Risks” (March 15, 2019), *available at* <https://www.sec.gov/news/speech/hinman-applying-principles-based-approach-disclosure-031519>.
- 13 SEC and PCAOB Public Statement, “Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies are Limited” (April 21, 2020), *available at* <https://www.sec.gov/news/public-statement/emerging-market-investments-disclosure-reporting>.
- 14 SEC Chairman Jay Clayton, “Statement on Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure” (January 30, 2020), *available at* <https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30>.
- 15 SEC Commissioners Allison H. Lee and Caroline A. Crenshaw, “Joint Statement on Amendments to Regulation S-K: Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information” (November 19, 2020), *available at* <https://www.sec.gov/news/public-statement/lee-crenshaw-statement-amendments-regulation-s-k>.
- 16 For further information, see our Client Memorandum: “U.S. Economic Sanctions Targeting Chinese Military Companies: New Executive Order Prohibits U.S. Persons from ‘Transacting’ in Publicly Traded Securities of ‘Communist Chinese Military Companies’” (November 17, 2020), *available at* <https://www.sullcrom.com/sc-publication-us-economic-sanctions-targeting-chinese-military-companies>.
- 17 SEC Division of Corporation Finance, “CF Disclosure Guidance: Topic No. 9” (March 25, 2020), *available at* <https://www.sec.gov/corpfin/coronavirus-covid-19>.
- 18 “Commission Guidance on Management’s Discussion and Analysis of Financial Condition and Results of Operations”, SEC Release Nos. 33-10751; 34-88094; FR-87 (January 30, 2020), *available at* <https://www.sec.gov/rules/interp/2020/33-10751.pdf>.
- 19 “Modernization of Regulation S-K Items 101, 103, and 105”, SEC Release Nos. 33-10825; 34-89670; File No. S7-11-19 (August 26, 2020), *available at* <https://www.sec.gov/rules/final/2020/33-10825.pdf>.
- 20 For further information, see our Client Memorandum: “SEC Adopts Amendments to Regulation S-K Disclosure Requirements: Amendments Make Disclosures of Business and Risk Factors More Principles-Based, Add a New Human Capital Disclosure Requirement and Update Certain Requirements for Disclosure of Legal Proceedings” (August 31, 2020), *available at* <https://www.sullcrom.com/sc-publication-sec-adopts-amendments-regulation-disclosure-requirements>.
- 21 The SEC noted that the risk summary is not required to contain all of the risk factors identified in the full risk factors discussion, and issuers may prioritize certain risks and omit others.
- 22 “Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information”, SEC Release Nos. 33-10890; 34-90459; IC-34100; File No. S7-01-20 (November 19, 2020), *available at* <https://www.sec.gov/rules/final/2020/33-10890.pdf>.
- 23 For further information, see our Client Memorandum: “SEC Adopts Amendments to Regulation S-K: Amendments to Regulation S-K Modernize, Simplify and Enhance MD&A and Other Financial Disclosures” (November 23, 2020), *available at* <https://www.sullcrom.com/sc-publication-sec-adopts-amendments-mda-financial-disclosure-requirements-regulation-s-k>.

ENDNOTES (CONTINUED)

- 24 “Amendments to Financial Disclosures about Acquired and Disposed Businesses”, SEC Release Nos. 33-10786; 34-88914; IC-33872; File No. S7-05-19 (May 20, 2020), *available at* <https://www.sec.gov/rules/final/2020/33-10786.pdf>.
- 25 For further information, see our Client Memorandum: “SEC Adopts Amendments to Required Financial Disclosures Regarding Acquisitions and Dispositions of Businesses: SEC Adopts Amendments to Update Significance Tests, Expand Use of Pro Forma Financial Information in Measuring Significance and Amend the Pro Forma Financial Information Requirements With Respect to Presenting Adjustments” (May 29, 2020), *available at* <https://www.sullcrom.com/sc-publication-sec-adopts-amendments-to-required-financial-disclosures>.
- 26 For further information, see our Client Memorandum: “SEC Permits Use of Electronic Signatures: The SEC Adopts Amendments to Rule 302 of Regulation S-T and the EDGAR Filer Manual to Allow Signatories to Use Electronic Signatures to ‘Sign’ EDGAR Filings” (November 25, 2020), *available at* <https://www.sullcrom.com/sc-publication-sec-permits-use-electronic-signatures>.
- 27 “Inline XBRL Filing of Tagged Data”, SEC Release Nos. 33-10514; 34-83551; IC-33139; File No. S7-03-17 (June 28, 2018), *available at* <https://www.sec.gov/rules/final/2018/33-10514.pdf>. For further information, see our Client Memorandum, “SEC Adopts New Rules Affecting Public Company Reporting: SEC Requires Use of Inline XBRL for Public Companies Including Funds, Eliminates XBRL Website Posting Requirement, Expands Companies Eligible for ‘Smaller Reporting Company’ Scaled Disclosure and Modifies Rules for Financial Statements of Smaller Acquired Businesses” (July 5, 2018), *available at* <https://www.sullcrom.com/sec-adopts-new-rules-affecting-public-company-reporting>.
- 28 SEC Compliance and Disclosure Interpretations, “Interactive Data” (August 20, 2019), *available at* <https://www.sec.gov/corpfin/interactive-data-cdi>.
- 29 “Modernization of Property Disclosures for Mining Registrants”, SEC Release Nos. 33-10570; 34-84509; File No. S7-10-16 (October 31, 2018), *available at* <https://www.sec.gov/rules/final/2018/33-10570.pdf>.
- 30 “Financial Disclosures about Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant’s Securities”, SEC Release Nos. 33-10762; 34-88307; File No. S7-19-18 (March 2, 2020), *available at* <https://www.sec.gov/rules/final/2020/33-10762.pdf>.
- 31 For further information, see our Client Memorandum: “Registered Offerings of Debt Securities: SEC Proposes Amendments to Simplify and Streamline Financial Disclosures About Issuers and Guarantors of Guaranteed Securities and Affiliates Whose Securities Collateralize Registered Securities” (August 1, 2018), *available at* <https://www.sullcrom.com/sec-proposed-new-rules-for-financial-disclosures-in-registered-offerings-of-debt-securities>.
- 32 “Update of Statistical Disclosures for Bank and Savings and Loan Registrants”, SEC Release Nos. 33-10835; 34-89835; File No. S7-02-17 (September 11, 2020), *available at* <https://www.sec.gov/rules/final/2020/33-10835.pdf>.
- 33 For further information, see our Client Memorandum: “SEC Finalizes Rules Updating Statistical Disclosure Requirements for Banking Registrants: Final Rules Continue the SEC’s Efforts to Eliminate Disclosure Requirements That Overlap With Other SEC Rules and Accounting Standards by Replacing Industry Guide 3 With Updated Disclosure Rules in a New Subpart of Regulation S-K” (September 25, 2020), *available at* <https://www.sullcrom.com/sc-publication-sec-finalizes-rules-updating-banking-registrant-disclosure>.
- 34 “Disclosure of Payments by Resource Extraction Issuers”, SEC Release No. 34-90679; File No. S7-24-19 (December 16, 2020), *available at* <https://www.sec.gov/rules/final/2020/34-90679.pdf>.

ENDNOTES (CONTINUED)

- ³⁵ For further information, see our Client Memorandum: “SEC Adopts Rules Implementing ‘Resource Payments’ Disclosure Requirements of the Dodd-Frank Act: Final Rules Require Oil, Gas and Mining Companies to Disclose Payments Made to Governments for Resource Development” (December 22, 2020), *available at* <https://www.sullcrom.com/sc-publication-sec-adopts-rules-requiring-disclosure-payments-to-governments-oil-gas-mining-companies>.
- ³⁶ The full text of the proposed rules is available at <https://listingcenter.nasdaq.com/assets/RuleBook/Nasdaq/filings/SR-NASDAQ-2020-081.pdf>.
- ³⁷ For purposes of the disclosure, LGBTQ+ refers to an individual who identifies as lesbian, gay, bisexual, transgender or a member of the queer community.
- ³⁸ For additional information, see our Client Memorandum: “Nasdaq Proposes Board Diversity Requirements: Proposed Rule Would Require Companies to Maintain at Least Two Diverse Directors or Explain Why They Do Not Meet That Standard” (December 14, 2020), *available at* <https://www.sullcrom.com/sc-publication-nasdaq-proposes-board-diversity-requirements>.

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