January 2022 Public Companies Update

Preparing for the 2022 10-K and Proxy Season

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January 2022

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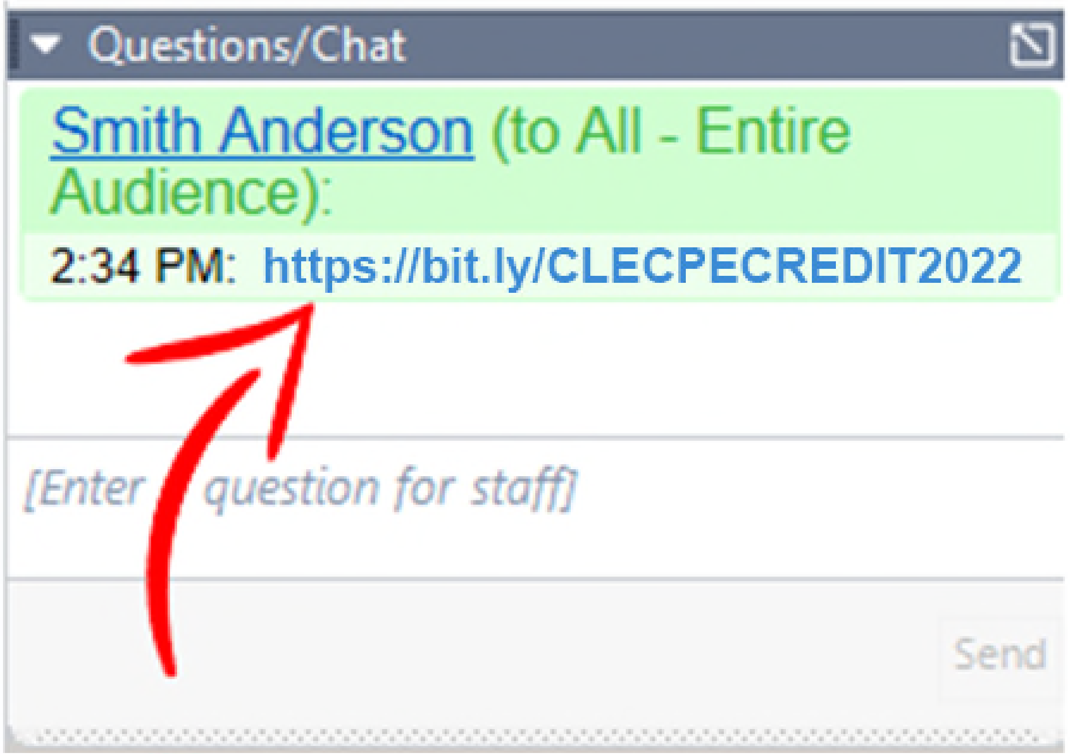

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After several years in New York practicing with a large corporate law firm, Jason and his wife chose to move their family south – to North Carolina's Research Triangle Park – where they preferred to raise their four boys, and where Jason knew he could continue a sophisticated corporate/transactional practice working alongside some of the largest companies in the world. That was over twenty years ago – amazing how fast time passes.

Over the years, Jason has worked with public and private companies of all shapes and sizes. As co-leader of the firm's Corporate team, Jason helps our clients raise money, acquire other companies and business lines, negotiate contracts and navigate tricky areas of corporate governance. At Smith Anderson, we believe that the only way to truly become part of the client team is to take the time to learn about our clients' businesses and the people who run them – being part of the team – that's what Smith Anderson is all about.

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Heyward Armstrong joined Smith Anderson in July 2006, where his practice focuses on corporate and securities law, including advising companies and their officers and directors on public company securities compliance, public and private offerings, mergers and acquisitions, divestitures and corporate governance matters. These matters involve a variety of industries, including a focus on the pharmaceutical, biotech and other life sciences areas. Heyward co-leads Smith Anderson's Public Companies practice group.

Prior to attending law school, Heyward was employed as a Senior Accountant with a global accounting firm in Raleigh, N.C., in its Assurance and Advisory Business Services group, where he supervised the planning and completion of audits of a number of public and private companies. He is licensed as a Certified Public Accountant.

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Alex Bowling joined Smith Anderson in 2013. He practices in the areas of securities law, corporate law, and mergers and acquisitions. Alex regularly represents companies of all sizes, from start-up and growth companies to large public corporations, with a particular emphasis on public offerings and private placements of securities, corporate governance and compliance matters. He also advises on corporate transactions, including asset purchases and dispositions and strategic collaborations.

Alex regularly speaks and writes on recent developments in the areas of corporate and securities law, including SEC-rule making affecting SEC reporting companies, as well as SEC rules permitting small public offerings under Regulation A, Regulation Crowdfunding and related securities registration exemptions.

Agenda

- SEC Agenda
- Form 10-K
- SEC Comment Letter Trends
- Proxy Season Updates and Preparation
- Recent SEC Enforcement Actions
- ESG Issues

Polling Question

SEC Agenda

New Administration

- Leadership
  - First year under the Biden administration
  - New appointments within the SEC
- Priorities
  - Generally, new administration regarded as more assertive and pro-enforcement
  - Already seeing a return to increasing regulatory oversight and escalated enforcement, signaling a more aggressive regulatory approach

SEC Leadership

- SEC Chair
  - Former Chair Jay Clayton resigned in December 2020 and was replaced by acting Chair Allison Herren Lee in January 2021
  - Present Chair Gary Gensler appointed in April 2021
  - Both Lee and Gensler regarded as pro-enforcement; Gensler widely perceived as an aggressive chair of the Commodity Futures Trading Commission during the Obama Administration
- SEC Enforcement Director – Gurbir Grewal appointed in June 2021, which continues a trend of appointing former prosecutors to this position

Enforcement Trends

- Enforcement expected to increase in FY22
- Expected focus on climate change and ESG disclosure issues, cryptocurrency compliance, SPACs, and so-called “meme-stocks”
- Emphasis on gatekeeper and individual accountability
- Penalties expected to increase
- More “First-in-Kind” cases
- Increased use of whistleblower awards

2021 Fall Reg-Flex Agenda

- In December 2021, the SEC released its new Fall reg-flex agenda.
- Some of the more notable ones for public companies on the short-term agenda:
  - Listing Standards for Recovery of Erroneously Awarded Compensation (Clawbacks)
  - Pay v. Performance
  - Corporate Board Diversity
  - Mandated Electronic Filings
  - Rule 10b5-1
  - Climate Change Disclosure
  - Human Capital Management Disclosure
  - Cybersecurity Risk Governance
  - Rule 14a-8 Amendments
  - Share Repurchase Disclosure Modernization
  - Universal Proxy

Clawback Proposal

- Chair Gensler issued a statement on October 15 showing support for the SEC's recent action to re-open comment on the Dodd-Frank Act rule regarding "clawbacks" of erroneously-awarded incentive-based compensation
- Congress first mandated the clawbacks under the Sarbanes-Oxley Act of 2002 and has continued to support the proposal since then
- If approved, the rule would require executives to pay back incentive-based compensation that was granted, earned or vested based wholly or in part on the attainment of a financial reporting measures that is later determined to be inaccurate
- Chair Gensler purports that enacting the clawback provisions would strengthen the transparency and quality of corporate financial statements, as well as the accountability of corporate executives to their investors
- Release is now out for public comment

Form 10-K

Polling Question

Changes to MD&A and Related Financial Disclosure Requirements

Significant Changes to MD&A and Related Financial Disclosure Requirements

- Amendments to Regulation S-K Items 301, 302 and 303
- Amendments became effective on February 10, 2021; registrants are required to comply with the new rules beginning with their first fiscal year ending on or after August 9, 2021 (for a December 31 year-end company, this will be its annual report for the year ended December 31, 2021)

Principles-Based, Registrant-Specific

- The changes generally eliminate certain prescriptive requirements in favor of a more flexible principles-based, registrant-specific approach
- Designed to elicit more tailored disclosures and simplify compliance efforts for registrants

Reg. S-K 301 – Selected Financial Data

- Prior Requirement: Item 301 formerly required disclosure of selected financial data for each of the last 5 fiscal years in a comparative table and, if applicable, data from additional fiscal years in order to prevent the five-year data from being misleading
- Amendments: Item 301 eliminated; registrants no longer required to provide 5 years of selected financial data
  - Modernization is in light of technological developments (i.e., the information is readily available on EDGAR) and is intended to simplify disclosure requirements

Reg. S-K Item 302 – Supplementary Financial Information

- Prior Requirement: Item 302(a) formerly required registrants to disclose 2 years of selected quarterly financial data, including net sales, gross profit, and income or loss from continuing operations, as well as an explanation of the effects of any unusual events or discontinued operations during the same period
- Amendments: Registrants no longer required to provide 2 years of tabular selected quarterly financial data. Item replaced with a principles-based requirement for material retrospective changes
  - Changes intended to reduce repetition and focus disclosure on material information
  - Disclosure generally only required when there are one or more retrospective changes that pertain to the statements of comprehensive income for any quarters within the two most recent fiscal years
  - Registrants now required to discuss material changes and provide a summary of the financial data for each affected quarter, as well as the fourth quarter of the affected fiscal year

Reg. S-K Item 303 – MD&A

Current Item/Issue	Summary of Amended Rules	Principal Objective(s)
New Item 303(a): *Objectives of MD&A*	Clarifies the objectives of MD&A, which is to allow investors to view the registrant "through the eyes of management"	Simplify and enhance the purpose of MD&A
New Item 303(b): *Full Fiscal Year Disclosure/Segment and Subdivision Information*	Clarifies that MD&A requires a narrative discussion of the reasons underlying material changes, rather than only the causes	Remind registrants that MD&A is to complement, and not just restate, the financial data

Reg. S-K Item 303 – MD&A (cont'd)

Current Item/Issue	Summary of Amended Rules	Principal Objective(s)
New Item 303(b)(1) and Amended Item 303(b)(1)(ii): *Material Cash Requirements*	Requires a description of material cash "requirements," including commitments for capital expenditures, instead of only capital expenditures	Align the rule with the intended purpose of MD&A and modernize the requirement by not limiting material cash commitments to capital expenditures
Amended Item 303(b)(2)(ii): *Results of Operations – Known Trends or Uncertainties*	Requires disclosure of trends or uncertainties that are *reasonably likely* to cause a material impact, rather than only what *will* cause a material impact	Use a disclosure threshold of "reasonably likely," which is consistent with the SEC's interpretative guidance on forward-looking statements

Reg. S-K Item 303 – MD&A (cont'd)

Current Item/Issue	Summary of Amended Rules	Principal Objective(s)
Amended Item 303(b)(2)(iii): *Results of Operations – Net Sales and Revenues*	Requires a narrative discussion if any material changes in net sales or revenues is the result of a change in price, volume, or amount of services or goods	Encompass all relevant changes (including decreases), rather than just increases
Current Item 303(a)(3)(iv): *Results of Operations – Inflation and Price Changes*	Eliminated	Eliminate redundancy as Item 303 already requires registrants to discuss the impact of inflation or price change as it relates to known trends or uncertainties

Reg. S-K Item 303 – MD&A (cont’d)

Current Item/Issue	Summary of Amended Rules	Principal Objective(s)
Current Item 303(a)(5) and Amended Item 303(b)(1): *Contractual Obligations Table*	Eliminates the tabular disclosure of contractual obligations	Eliminate redundancy as such financial information is required in connection with capital resources and material cash requirements disclosures
New Item 303(b)(3): *Critical Accounting Estimates*	Includes specific disclosure requirements concerning critical accounting estimates	Align with and codify prior SEC guidance on critical accounting estimates and guidance
Amended Item 303(c): *Interim Disclosure Requirements*	Same as current Item 303(b), with flexibility in determining reporting periods	Allow interim disclosure requirements to be presented in a more useful way based on the nature of the registrant’s business

Other Form 10-K Items

Risk Factor Updates - Key Risks to Consider

- Cybersecurity
- Human capital
- COVID-19
- Supply chain disruptions
- Climate change
- Inflation

Risk Factor Updates - Hypothetical Risks

- **Reminder**: Do not present risks that are occurring as hypothetical—the SEC has brought numerous enforcement actions against issuers for doing this

Form 10-K - Be Sure to Check:

- Your captions – Even if inapplicable, all captions must be included
- Your signature pages – Signatures can be electronic, as long as the registrant obtains a manually signed authentication document
- Certifications – Be sure to triple check the dates

SEC Comment Letter Trends

Polling Question

Comment Letters - Volume and Composition (From Ernst & Young)

- The volume of SEC staff comment letters in the 12 months ended June 30, 2021 declined approximately 20% from the previous year
  - This continues the downward trend of recent years
- SEC staff continues to concentrate on larger issuers; 72% of comment letters went to companies with public floats of more than $700 million, up from 58% the previous 12 month period

Most Frequent Comment Areas

1. Non-GAAP Financial Measures
2. MD&A
3. Segment Reporting
4. Revenue Recognition
5. Fair Value Measurements
6. Signatures/Exhibits/Agreements
7. Goodwill and Intangible Assets
8. Contingencies
9. Inventory and Cost of Sales
10. Income Taxes

Source: Ernst & Young

Non-GAAP Financial Measures

- SEC continues to focus on whether non-GAAP financial measures comply with relevant rules and regulations
- Most comments focus on:
  - Whether certain metrics should have been identified as non-GAAP measures
  - Whether non-GAAP measures are presented with the most directly comparable GAAP financial measure at the appropriate prominence level
    - SEC staff believes that, to comply with the requirement to present the comparable GAAP measure with equal or greater prominence, a registrant must present the GAAP measure before the related non-GAAP measure
    - In reconciliations, GAAP measures should precede the non-GAAP measures in the required reconciliations

Non-GAAP Financial Measures (cont.)

- The following are five common non-GAAP financial measure issues that drew Staff scrutiny:
  - GAAP measure not given enough prominence
  - Reconciliation between GAAP and non-GAAP measures is missing or does not start with the GAAP measure
  - Non-GAAP measure is not presented consistently between periods or the reason for changing a non-GAAP measure is not disclosed
  - Management fails to adequately explain why a non-GAAP measure is useful to investors
  - Use of an individually-tailored accounting principle (a company cannot make up its own GAAP)

Source: PwC

MD&A

- SEC often requests registrants to explain the results of operations with greater specificity, including identifying underlying drivers for each material factor that affected their earnings or is reasonably likely to have a material effect on future earnings
- SEC also focuses on key performance indicators, including whether registrants have disclosed key metrics used by management that would be material to investors and how those metrics correlate to material changes in the results of operations

MD&A (cont'd)

- Comments often request registrants to:
  - quantify the effects of factors that contributed to material period-to-period changes;
  - describe unusual or infrequent events or transactions, or any significant economic changes;
  - describe any known trends or uncertainties that have/are reasonably likely to have a material effect on sales, including those related to COVID-19;
  - provide a more robust analysis of critical accounting estimates; and
  - expand discussion of significant components of operating expenses – a discussion of changes in revenue and segment profit or loss without a direct explanation of changes is insufficient

Proxy Season Updates and Preparation

NYSE - Related Person Transactions

- NYSE amended Section 314 of its Listed Company Manual to require that the audit committee or another independent body of the board of directors conduct a reasonable *prior* review and oversight of all related party transactions
- The term “related party transactions” in the amended rule expressly refers to transactions required to be disclosed pursuant to Item 404 of Regulation S-K
- NYSE companies should ensure their approval processes of related person transactions have been updated to satisfy the new requirements and that their proxy statements reflect any revised approval procedures

NYSE – Calculation of Votes Cast

- NYSE shareholder approval standard: majority of the votes *cast*
- Historically, NYSE treated abstentions as votes cast, regardless of the standards under state law or the company's bylaws
- NYSE amended its rules to provide that majority of the votes cast must now be determined solely pursuant to the listed company's governing documents and applicable state law
- Standard is now aligned with Nasdaq shareholder approval standards
- NYSE-listed companies should ensure their proxy disclosures for matters that require shareholder approval under NYSE rules (e.g., approval of equity compensation plans) are accurate and up-to-date

Nasdaq - Board Diversity Rule

- Requires Nasdaq-listed companies to:
  - Publicly disclose board-level diversity statistics using a standardized template
  - Have or explain why they do not have at least two diverse directors
- SRCs can meet the diversity objective by including 2 female directors
- Companies with 5 or fewer directors can meet the diversity objective by including 1 diverse director

Nasdaq - Board Diversity Rule - Transition Period

	Initial Board Matrix	One Diverse Director or Provide Explanation*	Two Diverse Directors or Provide Explanation*
Nasdaq Global Select or Global Markets	August 8, 2022 or the date the company files its 2022 proxy, whichever is later	August 7, 2023 (2 years)	August 6, 2025 (4 years)
Nasdaq Capital Market			August 6, 2026 (5 years)
Boards with 5 or fewer directors			N/A

Nasdaq - Board Diversity Rule - Board Matrix

- If the company files its 2022 proxy before August 8, 2022 and does not include the matrix, then the company has until August 8, 2022 to provide the matrix in its Form 10-K or on its website
- If a company files its 2022 proxy on or after August 8, 2022, it must either include the matrix in its proxy or post the matrix on its website

Nasdaq - Board Diversity Rule - D&O Questionnaires

- Nasdaq's board diversity matrix is based on voluntary self-identification of characteristics; companies should therefore consider adding diversity questions in their annual D&O questionnaires if they do not already have them
- Questionnaires or other procedures should include obtaining the directors' and officers' consent to disclose
- Non-Nasdaq companies are encouraged to pay attention to the new policy as additional board diversity initiatives may be forthcoming

Virtual Annual Meetings

- Decide on format as early as possible to permit sufficient time to plan
- State law: Confirm permissibility of virtual meetings under applicable state law
    - North Carolina now allows fully virtual meetings
- Logistics: Make shareholders lists available before and during the meeting. Disclose where and when it will be available

Consider Reviewing Your Bylaws for Proxy-Related Updates

- Virtual shareholder meetings: Confirm that bylaws allow virtual shareholder meetings
- Advance notice provisions:
  - Confirm they are up-to-date and not “overtly unreasonable”
  - With new SEC mandatory proxy rules, advance notice bylaws are more important than ever
- Shareholder vote thresholds: Ensure compliant with state law and reflect the company’s desired approach

Recent SEC Enforcement Actions

SEC Enforcement Trends - 2021

- In fiscal year 2021, the SEC brought a diverse mix of 697 enforcement actions, including 434 standalone actions (standalone actions up 7% over the prior year)
  - Actions address a wide range of issues from issuer disclosure and accounting violations to broker-dealer misconduct
- SEC obtained record levels of judgments and orders (totaling approximately $3.8 billion in disgorgement and penalties)
- Record year for whistleblower awards, with the SEC awarding a total of $564 million to 108 whistleblowers

Noteworthy Enforcement Proceedings - Cybersecurity/Risk Factors (Pearson)

- Pearson plc referred to its 2018 data breach as a hypothetical risk in its July 2019 semi-annual report, when in fact the data breach had already occurred
- Pearson further stated that the breach may includes dates of births and email addresses, when it knew those records had been stolen
- SEC found that Pearson had made inaccurate and misleading disclosures regarding the cyber incident and that its disclosure controls and procedures were inadequate
- Pearson agreed to pay a $1 million civil penalty

Noteworthy Enforcement Proceedings - Cybersecurity/Risk Factors (First American Financial Corporation)

- In May 2019, a cybersecurity journalist notified First American of a vulnerability with its application for sharing document images that exposed over 800 million images dating back to 2003, including images containing sensitive persona data
- First American issued a press release and filed a Form 8-K
- However, First American senior executives responsible for the public disclosures were not aware that the company had identified the issue months before and not properly remediate it
- SEC found that First American's disclosure controls and procedures were inadequate
- First American paid a $487,616 penalty

SolarWinds Sweep

- SEC conducted an investigation regarding a cyberattack involving the compromise of software made by SolarWinds Corp., which was widely publicized in December 2020
- Staff issued a letter to numerous issuers requesting they provide information to the Staff on a voluntary basis
- Staff offered amnesty from enforcement actions (with certain limitations) for companies responding to the letter within specified deadlines

Noteworthy Enforcement Proceedings - Known Uncertainties (Under Armour)

- SEC instituted a settled action against Under Armour for allegedly misleading investors as to the bases of its revenue growth and failing to disclose known uncertainties concerning its future revenue prospects
- SEC alleged that the company accelerated, or "pulled forward," a total of $408 million in existing orders that customers had requested be shipped in future quarters
- Further, SEC alleged that the company attributed its revenue growth during the relevant period to a variety of other factors without disclosing to investors material information about the impact of its pull forward practices
- Under Armour agreed to pay a $9 million penalty.

Noteworthy Enforcement Proceedings - Perks (Gulfport Energy Corporation)

- SEC's order found that from 2014 to 2018, Gulfport failed to disclose approximately $650,000 in executive compensation in the form of perquisites, and also failed to disclose certain related personal transactions
- Alleged undisclosed perquisites included the CEO's use of the company's chartered aircraft and corporate credit card
- The company settled the action without admitting or denying the SEC's findings—because of its cooperation and prompt remedial efforts, it was not required to pay a civil penalty (in a separate order, the CEO was required to pay a civil penalty of $88,248)

Noteworthy Enforcement Proceedings - Perks (National Beverage)

- SEC's order found that from 2016 to 2020, National Beverage understated its CEO's compensation by a total of approximately $732,647 related to the use of corporate and charter aircraft
- The company settled the action without admitting or denying the SEC's findings and paid a civil penalty of $481,920)

Noteworthy Enforcement Proceedings - Form 12b-25

- SEC charged eight companies for failing to disclose in Form 12b-25 (“Notification of Late Filing”, or “Form NT”) filings that their request for seeking a delayed quarterly or annual reporting filing was caused by an anticipated restatement or correction of prior financial reporting
- SEC’s Associate Director in the Enforcement Division stated that the SEC will continue to use data analytics to uncover difficult to detect disclosure violations. Further, such targeted initiatives will allow the SEC to efficiently address disclosure abuses that have the potential to undermine investor confidence in the markets if left unaddressed

Noteworthy Enforcement Proceedings - Regulation FD (AT&T)

- SEC charged AT&T and 3 executives with repeatedly violating Regulation FD, which prohibits selective disclosure of material, non-public information, marking only the second filed litigation alleging violation of Regulation FD since its adoption in 2000
- Complaint alleges that three investor relations executives disclosed material non-public information to a group of analysts at 20 research firms in an effort to avoid the company's quarterly revenue falling short of the analyst community's estimates
- An SEC director commented that "Regulation FD levels the playing field by requiring that issuers disclosing material information do so broadly to the investing public, not just to select analysts… AT&Ts alleged selective disclosure … is precisely the type of conduct Regulation FD was designed to prevent"

Environmental, Social and Governance Issues (ESG)

ESG - Overview

- An area of very high interest
  - Several driving forces behind the interest, and many changes and proposals already underway
  - Expected that this will remain an important area for the foreseeable future
- Key issues:
  - Climate change
  - Human capital
  - Board diversity

ESG - Environment & Climate

- Increased investor attention
  - Since 2006, a steady increase in shareholder proposals requesting the reporting of climate change performance
  - Many large institutional investors have published proxy voting and engagement guidelines prioritizing ESG issues; investors are seeing a connection between long-term business health and systematic management of ESG issues such as climate change
  - Third-party frameworks for ESG disclosure growing in influence
- COVID-19 pandemic and global disruptions have been recent drivers of increased requests for disclosure

ESG - Environment & Climate (cont'd)

- Disclosures: Regulation S-K may require climate-related disclosures under the following sections
  - Description of Business (Item 101)
  - Legal Proceedings (Item 103)
  - Risk Factors (Item 105)
  - Management's Discussion and Analysis of Financial Condition and Results of Operations (Item 303)

ESG - Environment & Climate (cont’d)

- Disclosures – SEC’s “Sample Letter”
  - Asking why a company provided more expansive disclosures in its corporate social responsibility report than in its SEC filings
  - Requesting disclosure of “material effects of transition risks,” such as policy and regulatory changes that could impose operational and compliance burdens, market trends that may alter business opportunities, credit risks or technological changes
  - Requesting discussion of the indirect consequences of climate-related regulation or business trends (e.g. increased demand/competition to develop innovative new products that result in lower emissions)

ESG - Environment & Climate (cont'd)

- What to expect/recommendations
  - The SEC is expected to propose rules addressing climate change disclosure in the near term
  - ESG Task Force will continue to develop initiatives and investigations related to climate and ESG disclosures
  - Registrants should continue to focus on the information that they provide in their filings and carefully consider the applicability of existing SEC and Staff guidance in their disclosures, even if the registrant is not in a particularly carbon-intensive industry

ESG - Social Issues

- Interest has grown among employees and the general public, and investors and global financial regulatory bodies have likewise expanded their focus on disclosures around these topics
- Contributors: e.g. COVID-19 and workforce safety considerations; Black Lives Matter movement and a renewed national focus on racial justice across corporate America

ESG - Social Issues (cont'd)

- Human Capital Management
  - 2020 amendments to Reg. S-K now require, to the extent material, a discussion of human capital resources
  - Amendments are principles-based and notably do not define the term "human capital"; seeing wide variation (in both the level of detail and the measures discussed) in how companies have responded to amended Item 101
    - Some companies are providing general discussion, while others are providing specific quantitative metrics on various characteristics (e.g. race, ethnicity, gender, disability, age)
    - Other disclosures include discussion of employee recruitment, turnover, retention, training and engagement, and labor relations

ESG - Social Issues (cont'd)

- Human Capital Management
  - Common themes in 2021:
    - Impact of the COVID-19 pandemic a common theme for human capital disclosures in 2021
    - Diversity, equity and inclusion with respect to the workplace
  - Future discussion of vaccine policies and other return to the office/hybrid work policies?
- Recommendation: companies should review a spectrum of precedents to assess whether they should expand or supplement the approach they used in 2021

ESG - Social Issues (cont'd)

- Considerations for companies in advance of proposed rules:
  - Companies can anticipate that forthcoming rules are likely to include more prescriptive requirements than current SEC rules, which would lead to increased SEC oversight and public scrutiny with respect to their human capital management and diversity disclosures
  - Steps to take now:
    - Assess and improve disclosures and disclosure controls
    - Evaluate and strengthen human capital management and diversity, equity and inclusion policies and programs

ESG - Governance Issues

- Board Diversity
  - Key changes relating to both disclosure requirements, as well as board composition requirements
  - Increased pressure from shareholders and investors to provide more disclosures (shareholder proposals, for example, are increasing in both numbers and level of support)

ESG - Governance Issues (cont'd)

- Board Diversity: Disclosure Requirements
  - Disclosure requirements have been limited to date, though recent indications suggest this may soon be changing
  - 2009: the SEC approved a rule that requires public companies to disclose whether a nominating committee has a policy with regard to the consideration of diversity in identifying director nominees and, if so, how this policy is implemented and how the nominating committee or the board assesses the effectiveness of the policy. The rule did not, however, require any disclosure regarding the demographics of the board
  - 2019: the SEC issued two Compliance & Disclosure Interpretations (116.11 & 133.13) to clarify that if a board considers an individual nominee's self-identified diversity characteristics, the SEC now expects proxy disclosures to identify such characteristics and how they were considered
  - Increased voluntary disclosure

ESG - Governance Issues (cont'd)

- Board Diversity: Board Composition Requirements
  - December 2020, Nasdaq proposed new listing rules mandating certain board diversity requirements through a "comply or explain" framework, and in August 2021 the SEC approved Nasdaq's proposed rule
  - Nasdaq-listed companies are now required to:
    - Disclose aggregated information about the board; and
    - Include, or explain why their board does not include, certain "diverse" directors

ESG - Governance Issues (cont'd)

- Board Diversity: Diversity Requirements
  - Additional board diversity initiatives forthcoming
    - State consideration of board diversity legislation (e.g. California statutory mandate)
    - Voting policies established by proxy advisory firms
    - SEC's regulatory agenda
    - Global stock exchanges enacting or proposing new requirements; likely that the SEC is under pressure to incorporate its own rules on corporate board diversity

Additional Questions and Discussion

Thank you

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