Preparing Your 2017 Form 20-F

December 14, 2017

This memorandum highlights some considerations for the preparation of your 2017 annual report on Form 20-F. As in previous years, we discuss both disclosure developments as well as continued areas of focus for the U.S. Securities and Exchange Commission (**SEC**). In addition, we highlight certain U.S.-related regulatory actions and other developments of interest to foreign private issuers (**FPIs**).

Disclosure Developments for 2017 Form 20-F

While there has been no change in the substantive Form 20-F requirements this year, below are selected disclosure developments worth highlighting for FPIs.

Updated Form 20-F Cover Page

In April 2017, the SEC **adopted technical amendments** specifically relevant to emerging growth companies (**EGCs**) pursuant to the JOBS Act of 2012 resulting in changes to the cover page of the Form 20-F. The current version of the Form 20-F can be found on the SEC's website **here**.

XBRL

On March 1, 2017 the SEC **specified** the long-awaited taxonomy (i.e., the electronic dictionary of business reporting data) used for eXtensible Business Reporting Language (**XBRL**) reporting applicable to International Financial Reporting Standards (**IFRS**). Accordingly, FPIs that prepare financial statements under IFRS must file XBRL financial statements beginning no later than the filing of Form 20-F for the fiscal year ending on or after December 15, 2017. For further details, see our **Client Memorandum**.

On March 1, 2017, the SEC **proposed amendments** to change XBRL data formatting to Inline XBRL for operating company financial statement information and mutual fund risk/return summaries. Inline XBRL allows tagging information within an HTML document rather than in a separate document file. Under the proposed rules, the taxonomy and substantive content requirements of information to be submitted in XBRL would not change. The proposed rules would also eliminate the requirement to post separate XBRL data files on a company's public website. XBRL requirements apply to operating companies that prepare their financial statements in US GAAP or in accordance with IFRS. This proposal has not yet been adopted and therefore does not apply to this year's Form 20-F. For further details, see our **Client Memorandum**.

PCAOB Rule Expanding Auditor's Report

On October 23, 2017, the SEC **approved** a new PCAOB **audit standard** introducing significant changes to the content and presentation of the auditor's report on financial statements, and on December 4, 2017, the PCAOB **published staff guidance** on implementing these changes to the auditor's report.

Under the new audit standard, audit reports on financial statements for fiscal years ending on or after December 15, 2017 (i.e. those audit reports included in this year's Form 20-F) are required to:

- disclose the auditor tenure by stating the year the audit firm began consecutively serving as the company's auditor;
- include a statement that the auditor is required to be independent;
- include as addressees of the audit report shareholders and directors (or their equivalents);

- include new standardized language relating to the role and responsibilities of the auditor;
- move the auditor's opinion paragraph on fair presentation to the lead section; and
- include section titles to improve readibility.

In addition, with effect from fiscal years ending on or after June 30, 2019 for large accelerated filers and from fiscal years ending on or after December 15, 2020 for other issuers, the new audit standard requires the auditor's report, including audit reports filed by FPIs, to identify and discuss critical audit matters (**CAMs**) encountered in the audit. A CAM is defined as a matter that was communicated or required to be communicated to the audit committee, and that (a) relates to accounts or disclosures that are material to the financial statements and (b) involve especially challenging, subjective or complex auditor judgment. For further information see our **PCAOB Adopts New Standard Expanding Auditors' Reports Client Memorandum** and our **SEC Approves PCAOB Rule Expanding Auditor's Report Client Memorandum**.

SEC Staff Announces Further Relief from Conflict Minerals Reporting Requirements

On January 31, 2017, then acting SEC Chairman Piwowar issued a statement directing SEC staff to reconsider whether the **2014 guidance** on the conflict minerals rules was still appropriate and whether any additional relief is appropriate. On April 3, 2017, the DC District Court entered into a final judgment partially invalidating the SEC's conflict minerals rules on grounds that it violated the First Amendment free-speech guarantees. In response to the ruling, the SEC staff issued **updated guidance** for companies preparing their Form SD filings that was effective upon release.

The updated guidance makes clear that the staff would not recommend enforcement action if a company files only the disclosure in Form SD concerning the "reasonable country of origin inquiry" and does not file disclosure relating to due diligence on the source and chain of custody of conflict minerals or a Conflict Minerals Report. The previous guidance instructed companies to file their first Conflict Minerals Reports describing companies' reasonable country of origin inquiry, supply-chain due diligence but stated that companies need not characterize any products as "DRC conflict free," having "not been found to be 'DRC conflict free,'" or "DRC conflict undeterminable." On November 15, 2017, the House Committee on Financial Services announced that it had approved bills that would repeal the Dodd-Frank rules for conflicts minerals and mining disclosures. The passage of these bills should not impact FPIs' current compliance plans in relation to the 2017 Form 20-F, as even if the bills are passed, there is no guarantee that they will be enacted into law in the short term or at all.

Resource Extraction Disclosure Rules Repealed

On February 14, 2017, President Trump approved a joint resolution of Congress repealing the SEC's rule requiring resource extraction disclosure. The resource extraction disclosure rule was adopted in June 2016 and would have required domestic and foreign public companies engaged in the commercial development of oil, natural gas or minerals to annually disclose payments made to U.S. federal and foreign governments to further the commercial development of those resources. The disclosure would have been required for fiscal years ending on or after September 30, 2018. The rule was the second attempt by the SEC to implement the Dodd-Frank mandate; the first resource extraction disclosure rule adopted in August 2012 was overturned in federal court after an industry challenge. Technically, a requirement for the SEC to issue a resource extraction disclosure rule still remains on the books under Section 13(q) of the Securities Exchange Act of 1934, as amended by the Dodd-Frank Act with a new deadline in February 2018. We do not believe the current SEC will be in any rush to adopt a revised resource extraction rule under the Dodd-Frank mandate, and in any event the Congressional Review Act forbids any new rulemaking that is "substantially the same" as the voided rule absent additional statutory authorization. For further details, see our **Client Memorandum**.

Iran Sanctions and State Sponsors of Terrorism

FPIs' disclosure obligations under Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (**ITRA**) remain in effect. We discussed these obligations in our **Preparing Your 2012 Form 20-F** and **Preparing Your 2013 Form 20-F** memoranda. Section 219 of ITRA requires that public companies include explanatory disclosure and make an IRANNOTICE filing on EDGAR if they or their affiliates knowingly engaged during the period covered by the annual or quarterly report in certain Iran-related activities or certain transactions with persons on the SDN List designated for their support of terrorism or weapons of mass destruction proliferation.

Additionally, the SEC has continued to focus on issuers' contacts with other countries besides Iran that have been identified as State Sponsors of Terrorism. FPIs should evaluate the materiality of any contacts with countries identified as State Sponsors of Terrorism (currently North Korea,[1] Iran, Sudan and Syria) and consider, if applicable, risk factor and other disclosure.

Active Hyperlinks Required in Exhibit Indexes

On March 1, 2017, the SEC **adopted rules** requiring issuers to include hyperlinks to filed exhibits listed in the exhibit indexes in registration statements and periodic and current reports, including Form 20-F (but excluding Form 6-K). The rules are effective for filings submitted on or after September 1, 2017. For further details, see our **Client Memorandum**.

Continued SEC Disclosure Focus Areas

SEC Guidance on Non-GAAP Financial Measures

The SEC's Division of Corporation Finance has issued more than 600 comment letters to companies in relation to non-GAAP measures since January 1, 2017. While the Division of Corporation Finance has indicated that non-GAAP measures will be less of a focus area for the Division, it indicated that it would continue to keep an eye on compliance in filing reviews. SEC staff will look at the use of performance metrics within industries and across industries. The Division will pay particular attention to whether reporting is consistent across periods, the quality of the disclosure surrounding changes in the use of metrics and the impact of any changes.

On October 17, 2017, the SEC updated its non-GAAP financial measures guidance with **new Compliance and Disclosure Interpretations** (**C&DIs**) that discuss the exemption from Regulation S-K Item 10(e) and Regulation G for financial measures included in forecasts provided to a financial advisor and used in connection with a business combination transaction. The new C&DIs specify required conditions for the exemption when non-GAAP financial measures are disclosed pursuant to Item 1015 of Regulation M-A and provide a similar exemption for such disclosure pursuant to state or foreign law requirements regarding disclosure of a financial advisor's analyses. The old C&DI 101.01 has been revised to remove the discussion of Item 1015 of Regulation M-A and is renumbered as 101.02. For further information on the use of non-GAAP financial measures, see our **SEC Releases Guidance on Non-GAAP Financial Measures Client Memorandum**.

Implementation of New Revenue Recognition Accounting Standards

ASC 606 and IFRS 15 are required to be adopted by most public companies (including FPIs) starting January 1, 2018. Companies can choose between the full retrospective method and the modified retrospective method to implement the new rules. For further information, see our **Client Memorandum**.

[1] North Korea was designated on November 20, 2017 as a State Sponsor of Terrorism.

Cybersecurity

As discussed in our **Preparing Your 2016 Form 20-F** memorandum, the SEC and U.S. lawmakers continue to focus on cybersecurity as a topic for disclosure and related rulemaking. At the Practising Law Institute 49th Annual Securities Regulation Institute in November 2017, the SEC Division of Corporation Finance indicated that they expect new cybersecurity guidance to be forthcoming. Furthermore, SEC staff have increasingly included questions concerning cybersecurity risks in their filing review comments. For example, companies that include boilerplate cybersecurity risk factors in their filings have been asked to provide "proper context" to their risk factor disclosure, such as whether the registrant has experienced a cyber security breach. Cybersecurity-related legislation remains pending in the United States, including the **Cybersecurity Disclosure Act of 2015**, which was introduced in the Senate in December 2015, and the **Cybersecurity Systems and Risks Reporting Act**, which was introduced in the House of Representatives in April 2016, both of which are discussed in further detail in our **Preparing Your 2016 Form 20-F** memorandum.

Enforcement Matters

Foreign Corrupt Practices Act

Following the June 2017 Supreme Court decision in *Kokesh v SEC*, in which the Court held that the SEC's claims for disgorgement are subject to the five-year statute of limitations, the SEC's Enforcement Division in a **November speech** indicated that the SEC is making a concerted effort to bring Foreign Corrupt Practices Act cases as quickly as possible.

Other Matters That May Be of Interest to FPIs

NYSE

NYSE Rule Amendment to Require Advance Notice of Dividend and Stock Distribution Announcements

The SEC has approved an **amendment to the NYSE Listed Company Manual** to require NYSE-listed companies (including FPIs) to notify the NYSE at least 10 minutes in advance of making a public announcement at any time, including after trading hours, relating to dividends and other distributions. The implementation date of this rule change has been delayed but is expected to be no later than February 1, 2018.

SEC Approves NYSE Rule Change to Amend Material News Policy

The SEC entered an **order approving a rule change by the NYSE to amend the Material News Policy** in Section 202.06 of the NYSE Listed Company Manual to prohibit companies from issuing material news after the official closing time of the NYSE until the earlier of the publication of their security's official closing price on the NYSE and five minutes after the official closing time. The approved rule change includes a carve out for disclosure of material information by a listed company following a non-intentional selective disclosure under the requirements of Regulation FD. Notwithstanding this rule change, the NYSE continues to recommend that listed companies delay the release of material news after the close of trading on the NYSE until the earlier of the publication of their security's official closing price and 15 minutes after the official closing time.

Information Relevant to U.S. Public Securities Offerings

SEC Filing Fee Increase

As of October 1, 2017, the **filing fee** to register securities with the SEC increased to $124.50 per million dollars from $115.90 per million dollars. The SEC makes annual adjustments to the rates for fees and the annual rate changes take effect on the first day of each U.S. government fiscal year, i.e., October 1.

NYSE to Increase Certain Listing Fee Provisions for 2018 Calendar Year

On October 30, 2017, the NYSE filed a **proposed rule change** with the SEC, effective upon filing, to amend the **NYSE Listed Company Manual** to increase certain NYSE listing fee provisions to take effect in the 2018 calendar year. The proposed fee increases include: (i) the fee per share in connection with certain listed securities; (ii) the minimum annual fee applicable to the primary class of common shares or primary class of preferred stock; (iii) the minimum annual fee applicable to certain structured products; (vi) The initial and annual listing fees for debt listed under Section 102.03 and 103.05 of the Listed Company Manual; and (v) the initial and annual listing fees for securities (including short-term securities) that list under the debt standard in Section 703.19 of the Listed Company Manual and trade on NYSE Bonds. The specific proposed fee increases can be found **here**.

Adoption of T+2 Settlement Cycle

Effective September 5, 2017, the standard settlement cycle for most broker-dealer transactions was shortened to two days after the trade date from the previous three business day cycle. The new standard settlement cycle is designed to enhance efficiency and reduce risk. The new standard settlement cycle applies to the same securities transactions previously covered by the T+3 settlement cycle. These include transactions for stocks, bonds, municipal securities, exchange-traded funds, certain mutual funds, and limited partnerships that trade on an exchange. For further details, please see our **Client Memorandum**.

SEC Expands Ability to File Registration Statements on a Nonpublic Basis and Exclude Interim Financials

On June 29, 2017, staff in the SEC's Division of Corporation Finance **announced several welcome changes** to the filing process for IPO and newly public companies. Beginning on July 10, 2017, the staff began accepting nonpublic draft registration statements from all issuers covering IPOs and initial registrations under Exchange Act Section 12(b). This expands a benefit granted solely to EGCs by the JOBS Act of 2012 and to certain FPIs as a matter of SEC policy. The SEC will also grant nonpublic review to the first submission of a draft registration statement within one year after an IPO or initial registration under Exchange Act Section 12(b). Subsequent amendments to these registration statements must, however, be filed publicly. This expansion of nonpublic review does not extend other EGC benefits to all companies, such as the ability to engage in "testing the waters" prior to the filing of a registration statement, or relief from auditor attestation of the effectiveness of internal controls. FPIs have the option of electing to follow the above procedures for draft registration statements, the procedures available to EGCs (if the FPI qualifies) or the **guidance** for nonpublic submissions from FPIs released by the SEC on May 30, 2012. For further information, see our **Client Memorandum**.

On August 17, 2017, the SEC issued additional guidance pursuant to which a company that submits a draft registration statement to the SEC can now exclude interim financial statements if that interim financial information would not need to be included in the registration statement when it is publicly filed, or at the time of the offering, for EGCs. For further information, see our **Client Memorandum**.

House Passes Two Bipartisan Bills to Facilitate Securities Offerings

On November 1, 2017, the House passed two bills designed to encourage capital formation by extending JOBS Act testing-the-waters provisions to all companies, codifying the SEC's earlier expansion of confidential submission of draft registration statements by a non-emerging growth company for its IPO and during the one-year period after going public, and modifying the definition of an accredited investor to make more individuals eligible to participate in private placements. The bills were passed on a bipartisan basis and echo proposals that were part of the Financial Choice Act passed by the House in June 2017 and the Treasury Department's recent regulatory reform report on capital markets. We expect the bills

would likely be passed and signed into law if they reach the Senate floor for a vote. For further information, see our **Client Memorandum**.

The Financial CHOICE Act 2.0

A revised version of the Financial CHOICE Act (discussed in our **Preparing Your 2016 Form 20-F** memorandum), commonly referred to as CHOICE Act 2.0, was passed by the House of Representatives in June 2017. Prospects of CHOICE Act 2.0 being approved in its current form by the Senate are slim but Representative Hensarling has indicated that he plans to work with the Senate to move portions of CHOICE Act 2.0 forward as separate, narrower bills that might be more likely to gain Senate support. A number of changes are proposed to the original Choice Act as summarized in our **Client Memorandum**, although notably CHOICE Act 2.0 would still repeal conflict minerals and mine safety disclosure requirements. CHOICE Act 2.0 also contains provisions similar to those in the bipartisan bills passed by the House on November 1, 2017, including extending the JOBS Act testing-the-waters provisions to all issuers. For Further details, please see our **Client Memorandum** and our blog **FinRegReform.com**.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

William F. Barron	**+852 2533 3303**	**william.barron@davispolk.com**
Maurice Blanco	**+55 11 4871 8402** **+1 212 450 4086**	**maurice.blanco@davispolk.com**
Leo Borchardt	**+44 20 7418 1334**	**leo.borchardt@davispolk.com**
Bruce K. Dallas	**+1 650 752 2022**	**bruce.dallas@davispolk.com**
Jon Gray	**+81 3 5574 2667**	**jon.gray@davispolk.com**
Sophia Hudson	**+1 212 450 4762**	**sophia.hudson@davispolk.com**
Michael Kaplan	**+1 212 450 4111**	**michael.kaplan@davispolk.com**
Nicholas A. Kronfeld	**+1 212 450 4950**	**nicholas.kronfeld@davispolk.com**
Michael J. Willisch	**+34 91 768 9610**	**michael.willisch@davispolk.com**
Connie I. Milonakis	**+44 20 7418 1327**	**connie.milonakis@davispolk.com**

© 2017 Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's **privacy policy** for further details.