SHEARMAN & STERLING LLP

CAPITAL MARKETS

CLIENT PUBLICATION

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It's Annual Report Time!

New Developments, Practices and Trends for the 2012 Form 20-F

Contents

For a large number of non-US companies with a calendar year end, it is time to prepare the annual report on Form 20-F. For these companies, the report must be filed with the US Securities and Exchange Commission (*SEC*) by April 30, 2013.

In order to assist with the preparation of your 2012 Form 20-F, this note summarizes new developments and best practices, highlights topics and trends that will likely be the focus of review by the SEC and discusses various other developments of interest to non-US companies.

NEW LAWS AND REGULATIONS

The last year saw the enactment of the Iran Threat Reduction and Syria Human Rights Act (*Threat Reduction Act*), which imposes new disclosure requirements on companies subject to the periodic reporting requirements of the Securities Exchange Act of 1934 (*Exchange Act*), and the adoption by the SEC of rules requiring disclosure about the use of conflict minerals, mine health and safety, government payments by resource extraction issuers and a rule requiring the US national securities exchanges to adopt listing standards with respect to the independence of compensation committees and their advisers, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (*Dodd-Frank Act*). We discuss these developments and the effects they have on foreign private issuers' Form 20-F disclosure in this section.

Iran Threat Reduction and Syria Human Rights Act

On October 9, 2012, President Obama issued an Executive Order implementing certain provisions of the Threat Reduction Act, which authorizes the Secretary of State and the Secretary of the US Treasury to apply sanctions against non-US persons and against US companies for the acts of foreign subsidiaries that engage, or have engaged, in transactions related to Iran's oil and gas sector or its attempts to develop weapons of mass destruction. The US National Defense Authorization Act for 2013, signed into law on January 2, 2013, bars all transactions with Iran's energy, shipping and shipbuilding sectors and its ports, designating them as entities of "proliferation concern."

The EU has also repeatedly strengthened its sanctions regime against Iran, most recently on October 15, 2012 by prohibiting all transactions between European and Iranian banks (unless explicitly authorized in advance by national authorities), banning the import of natural gas from Iran into the EU and imposing additional export controls, among other measures. Canada likewise announced further sanctions against Iran in December 2012 in light of Iran's continued lack of cooperation with the International Atomic Energy Agency (*IAEA*) and to maintain consistency with similar measures adopted by the EU and other countries.

The latest developments in US and EU sanctions against Iran are summarized in our client publication available at: http://www.shearman.com/Sanctions-Round-Up-Fourth-Quarter-2012-01-07-2013/.

Since 2005, the SEC has sharply increased its scrutiny of disclosures by companies, US and non-US, of their business activities with governments, entities and individuals disfavored by the US government. Following the enactment on August 10, 2012 of the Threat Reduction Act and the imposition of other sanctions against Iran and Syria by the US and the EU, any disclosure about business relationships in or with Iran, Syria or other countries considered state sponsors of terrorism will certainly remain a focus area for the SEC and will be monitored by the Office of Global Security Risk (*OGSR*) in the review of 2012 Forms 20-F.

New Reporting Requirement

Section 219 of the Threat Reduction Act mandates additional disclosure requirements for companies that are subject to the periodic reporting requirements of the Exchange Act, including foreign issuers, concerning certain Iran-related activities and, under a plain reading of the statute, certain activities with non-Iran related persons or entities listed on the US Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (*SDNs*). These activities generally relate to Iran's energy and financial sectors and Iran's suppression of human rights, but also to transactions with the Government of Iran, global terrorists and weapons proliferators. Such activities are disclosable if they are conducted by a reporting company or any of its affiliates.

Section 219, which is codified in a new Section 13(r) of the Exchange Act, applies to periodic reports, including annual reports on Form 20-F, filed on or after February 6, 2013. Companies must also file with the SEC, at the same time as the periodic report, a notice that identifies the company and indicates that disclosure of the activity has been included in its periodic report. These notices will appear with the company's filings on EDGAR and will be searchable on the SEC's website. Upon receipt of such notice, the SEC is required to alert the US Congress and President of the disclosure. An investigation will be initiated to determine whether sanctions should be imposed with respect to the company or its affiliate.

In light of these new requirements, companies should carefully review their business activities to determine whether such activities are reportable under Section 219/Section 13(r) and consider implementing screening procedures to ensure that they are not engaged in reportable activities with SDNs. In addition, as Section 219 mandates that the required disclosure of such activities be in the Form 20-F, this disclosure requirement will be covered by the CEO and CFO certifications under Sections 302 and 906 of the Sarbanes-Oxley Act that accompany the Form 20-F. As a result, companies need to put in place disclosure controls and procedures to evaluate and document whether disclosure is required for the company and any affiliate under Section 13(r) and, if so, to ensure that such disclosure is materially correct.

Our client publications that summarize the new disclosure requirements under Section 219 of the Threat Reduction Act are available at: http://www.shearman.com/section-219-of-iran-threat-reduction-and-syria-human-rights-act-of-2012--additional-reporting-requirements-for-us-domestic-and-foreign-issuers-registered-with-sec-11-08-2012/ and at: http://www.shearman.com/the-iran-threat-reduction-and-syria-human-rights-act-of-2012--how-are-you-planning-to-comply-with-section-219s-new-reporting-requirements-12-17-2012/. The SEC's Division of Corporation Finance released compliance and disclosure interpretations relating to Section 219 on December 4, 2012. A summary of these interpretations is included in our client publication available at: http://www.shearman.com/sec-publishes-cdis-for-iran-sanctions-disclosures-required-under-exchange-act-section-13r-12-06-2012/.

Current US Sanctioned Country Disclosure

Even if a company concludes that it does not have a reporting obligation under Section 219 of the Threat Reduction Act, in light of the tightened sanctions and the heightened SEC focus in this area, we recommend that companies review their current Form 20-F disclosure, in particular in the risk factor section, about their business relationships with Iran, Syria, Sudan, Cuba and other sanctioned entities and persons. Such review should focus not only on updating the prior year's disclosure, but determining whether enhanced disclosure is warranted. In particular, companies need to keep in mind that, in addition to reviewing SEC filings like Forms 20-F and 6-K, the OGSR also regularly monitors press releases, websites and social media networks, such as Facebook and Twitter, for references to a company's activities in sanctioned countries and therefore companies must ensure that their disclosure is aligned. Companies that disclose activities in sanctioned countries through any of these means can expect to receive a comment letter from the OGSR asking various questions about those business activities, which may lead to enhanced disclosure.

Activities in or with these countries will in any event need to be reviewed to determine compliance with US sanctions legislation, which may apply even to foreign private issuers, and which may affect their ability to undertake certain activities, including raising capital, in the United States.

Conflict Minerals

On August 22, 2012, the SEC adopted the conflict minerals rules implementing Section 1502 of the Dodd-Frank Act, which relates to reporting requirements regarding conflict minerals originating in the Democratic Republic of the Congo and adjoining countries (*Covered Countries*). The new rules impose additional disclosure obligations on companies that use "conflict minerals" in their products. The conflict minerals rules apply to companies that file reports under Section 13(a) or Section 15(d) of the Exchange Act, including foreign private issuers that file annual reports on Form 20-F. The disclosure a company is required to make under the conflict minerals rules is determined by a three-step analysis:

- Each company must first determine whether it is subject to the conflict minerals rules. The conflict minerals rules apply if conflict minerals are necessary to the functionality or production of products manufactured or contracted to be manufactured by a company. Companies whose products do not contain conflict minerals are not subject to the conflict minerals rules and are not required to make any conflict minerals disclosures.
- If a company uses conflict minerals in its products, it must undertake a reasonable country of origin inquiry to determine whether the conflict minerals it uses originated in the Covered Countries or from recycled or scrap sources. If the company (i) determines that its conflict minerals did not originate in the Covered Countries or has no reason to believe that such minerals may have originated in the Covered Countries or (ii) determines, or reasonably believes, that its conflict minerals originated from recycled or scrap sources, it only needs to disclose that determination and describe the inquiry it used in reaching that determination.
- Finally, if a company determines that its conflict minerals did originate, or has reason to believe that such minerals may have originated, in the Covered Countries and are not from recycled or scrap sources, it is required to conduct further due diligence on the source and chain of custody of its conflict minerals. Depending on the findings of the due diligence, the company may be required to file a conflict minerals report containing certain additional disclosures and an independent private sector audit.

Affected companies are required to comply with the conflict minerals rules beginning with the calendar year ending December 31, 2013 by filing their conflict minerals disclosure and, if required, conflict minerals report on new Form SD by May 31, 2014.

As companies assess their use of conflict minerals during 2013 to determine whether they have a Form SD disclosure obligation, they should carefully consider any current disclosure proposed for the 2012 Form 20-F to ensure that it aligns with the likely heightened scrutiny of the use of conflict minerals. Such disclosure has often been contained in a section dealing with a company's corporate social responsibility or environmental/sustainability practices.

Going forward, the fact that the SEC does not require conflict minerals information to be included in a company's annual report on Form 20-F but rather in the new Form SD, while helpful, is not determinative of materiality and whether disclosure on the use of conflict minerals should be included in the Form 20-F. In some cases, information regarding a company's conflict minerals sourcing policies could have a material financial effect, because it highlights reputational risks or because certain institutional investors have policies that prohibit them from investing in companies that do not follow responsible conflict mineral sourcing.

Our most recent client publication on the conflict minerals rules is available at: http://www.shearman.com/All-that-Glitters-May-Be-a-Reportable-Conflict-Mineral-12-19-2012/.

Mine Health and Safety

On December 21, 2011, the SEC adopted a final rule implementing Section 1503 of the Dodd-Frank Act, which relates to disclosure requirements for mining companies regarding mine health and safety. In particular, Section 1503 of the Dodd-Frank Act requires companies that operate mines in the United States to disclose specified information about compliance with the safety and health requirements under the Federal Mine Safety and Health Act of 1977, which is administered by the US Department of Labor's Mine Safety and Health Administration.

Section 1503 of the Dodd-Frank Act was self-implementing, and the new disclosure requirements came into effect on August 20, 2010. Section 1503 of the Dodd-Frank Act applies to any company that is an operator, or that has a subsidiary that is an operator, of a coal or other mine in the United States and introduced two sets of new disclosure requirements for such companies:

- disclosure requirements that apply to all such companies, including foreign private issuers, that file periodic reports with the SEC under the Exchange Act; and
- disclosure requirements that apply to companies that file current reports with the SEC on Form 8-K, which does not include foreign private issuers.

The rule adopted by the SEC amended the Exchange Act reporting forms, including Form 20-F, to incorporate the mine safety disclosure requirements of Section 1503 of the Dodd-Frank Act. Our client publication on the mine safety disclosure requirements is available at: http://www.shearman.com/sec-adopts-dodd-frank-mine-safety-disclosure-rules-12-22-2011/.

Government Payments by Resource Extraction Issuers

On August 22, 2012, the SEC adopted the government payments rules implementing Section 1504 of the Dodd-Frank Act. The government payments rules relate to reporting requirements regarding certain payments made by oil and gas and mining companies to foreign governments and the US federal government. The government payments rules apply to "resource extraction issuers," which includes any US and foreign company that is engaged in the commercial development of oil, natural gas or minerals and that is required to file annual reports with the SEC, regardless of the size of the company, the extent of business operations that constitute commercial development of oil, natural gas or minerals or whether the company is government-owned.

The government payments rules require the disclosure to be provided in new Form SD, separate from the company's existing Exchange Act annual report. Form SD requires companies to include a brief statement in the body of the form, in an item entitled "Disclosure of Payments By Resource Extraction Issuers," directing investors to the detailed payments information to be provided in exhibits to the form. A resource extraction issuer must submit the payments information in a single exhibit formatted in eXtensible Business Reporting Language (*XBRL*).

Affected companies are required to comply with the government payments rules beginning with the fiscal year ending after September 30, 2013, by filing the required disclosures on Form SD no later than 150 days after the end of the fiscal year.

Our client publication on the government payments rules is available at: http://www.shearman.com/sec-adopts-dodd-frank-conflict-minerals-and-government-payments-rules-08-27-2012/.

Independence of Compensation Committee and its Advisers

When preparing their annual reports on Form 20-F, foreign private issuers listed on the New York Stock Exchange (*NYSE*) and the NASDAQ Stock Market (*NASDAQ*) should keep in mind the new listing standards related to the independence of the compensation committee and its advisers recently adopted by these two exchanges. The new listing standards were required by final rules that the SEC adopted in June 2012 pursuant to the Dodd-Frank Act. The amendments to the NYSE listing standards will generally become effective on July 1, 2013, except that NYSE-listed companies will have until the earlier of (1) their first annual meeting after January 15, 2014 or (2) October 31, 2014, to comply with the new standards for compensation committee independence. The provisions of the new NASDAQ listing standards which require compensation committees to have the specific responsibilities and authorities will become effective on July 1, 2013, and NASDAQ-listed companies will also have to comply with the remaining provisions by the earlier of: (1) their first annual meeting after January 15, 2014; or (2) October 31, 2014.

The SEC's final rules exempt from the compensation committee independence requirements (but not the compensation adviser rules) any foreign private issuer that discloses in its annual report the reasons it does not have an independent compensation committee. The NYSE expands this exemption so that foreign private issuers that follow their home country corporate governance practices are exempt from both the compensation committee independence rules and the compensation adviser rules, provided that the foreign private issuer discloses the significant ways in which its corporate governance practices differ from those followed by US domestic listed companies. NASDAQ likewise exempts foreign private issuers that follow their home country corporate governance practices from both the compensation committee independence rules and the adviser rules, provided that the foreign private issuer discloses each NASDAQ listing requirement that it does not follow and describes its applicable home country practice. With respect to the enhanced standards of independence for compensation committees, if a NASDAQ-listed company follows its home country practice, it must additionally disclose in its annual report the reasons why it does not have an independent compensation committee as set forth in these standards.

Additional information on the SEC's final rules is available in our client publication at: http://www.shearman.com/sec-issues-final-rules-on-independence-of-compensation-committees-06-26-2012/ and more information on the new NYSE and NASDAQ listing standards is included in our client publication available at: http://www.shearman.com/the-nyse-and-nasdaq-issue-proposed-rules-to-implement-the-sec-compensation-committee-independence-and-advisor-rules-10-04-2012/.

SEC DIVISION OF CORPORATION FINANCE DISCLOSURE GUIDANCE

In 2012, the SEC's Division of Corporation Finance issued guidance regarding disclosure of exposures to the sovereign debt of certain European countries, MD&A and accounting policy disclosures of smaller financial institutions and disclosure by certain financial institutions in connection with their structured note offerings. The guidance on European sovereign debt will be especially relevant to many foreign private issuers as they prepare their Form 20-F. In light of continuing attacks on corporate networks and computer systems, companies should also keep in mind the guidance regarding disclosure obligations relating to cybersecurity risks and cyber incidents published in October 2011. The disclosure guidance provided by the Division of Corporation Finance in recent years is available at: http://www.sec.gov/divisions/corpfin/cfdisclosure.shtml.

European Sovereign Debt Exposures

On January 6, 2012, the Division of Corporation Finance of the SEC published guidance setting out the division's views regarding disclosure of financial institutions' direct and indirect exposures to the debt of certain European countries. The guidance is available at: http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic4.htm.

In light of the European sovereign debt crisis, the Division of Corporation Finance focused on the risks posed to financial institution registrants from exposure to the debt of certain affected countries. The division reported that it has issued comments in this area in the past; however, in an effort to improve clarity and comparability more broadly, the Division of Corporation Finance's guidance seeks to help all registrants determine what information they should disclose in respect of their exposure to the European sovereign debt crisis. The guidance focused on the need for greater disclosure on this topic in the following disclosure items:

- risk factors;
- the discussion of known trends and uncertainties in MD&A;
- quantitative and qualitative disclosures of market risk; and
- for bank holding companies, Industry Guide 3 disclosure.

In its guidance, the Division of Corporation Finance advised that such disclosure should be:

- provided on a country-by-country basis;
- segregated by sovereign and non-sovereign exposures; and
- segregated by financial statement category to arrive at gross funded exposure, as appropriate.

Registrants that are not financial institutions that are exposed to European sovereign debt affected by the crisis should also take note of the Division of Corporation Finance's guidance as a guide for assessing their disclosures related to this topic.

Our client publication on the Division of Corporation Finance's disclosure guidance on exposures to the sovereign debt of certain European countries is available at: http://www.shearman.com/european-sovereign-debt-crisis-sec-staff-publishes-disclosure-guidance-regarding-european-sovereign-debt-exposures-01-09-2012/.

Cybersecurity

On October 13, 2011, the Division of Corporation Finance issued guidance on the disclosure obligations relating to cybersecurity risks and cyber incidents that should be taken into consideration when preparing the 2012 Form 20-F. The guidance is available at: http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm.

It is the Division of Corporation Finance's view that companies should consider the following items in assessing their disclosure obligations with respect to cybersecurity risks and incidents:

- *Risk Factors*. In assessing required risk factor disclosure, companies should consider the probability of cyber incidents occurring and the quantitative and qualitative magnitude of those risks, including the occurrence of prior cyber incidents and their severity and frequency and the adequacy of preventative actions taken. It is important that any risk factor disclosure be tailored to the specific facts and circumstances of the company and not be boilerplate or only address the risk in hypothetical terms following an actual material cyber breach at the company.
- *MD&A*. Companies should consider if there are costs or other consequences associated with one or more known cyber incidents or if the risk of potential incidents represent a material event, trend or uncertainty that is reasonably likely to have a material effect on the company's results of operations, liquidity or financial condition or would cause reported financial information not to be necessarily indicative of future operating results or financial condition.
- *Business Description and Legal Proceedings*. Disclosure is required if one or more cyber incidents materially affect a company's products, services, relationships with customers or suppliers, or competitive conditions, and such disclosure should consider the impact on each of the company's reportable segments. Additionally, any material pending legal proceeding involving a cyber incident may also have to be disclosed.
- *Financial Statement Disclosure and Disclosure Controls and Procedures*. Companies should also contemplate whether costs relating to cyber incidents may have an impact on their financial statements. For example, consideration should be given to the possible effects on costs, losses from asserted and unasserted claims and diminished future cash flows. In

addition, companies should be vigilant to monitor and disclose the extent to which cyber security issues or incidents pose risks to their disclosure controls and procedures or internal control over financial reporting.

Review of Adequacy of Current Disclosure Relating to Cybersecurity. Companies should review the adequacy of their current disclosure relating to cybersecurity risks and cyber incidents and monitor it on an ongoing basis. The guidance clarifies, however, that detailed disclosure that itself would compromise a company's cybersecurity (for example, by providing a "roadmap" for those seeking to infiltrate a company's network security) is not required.

Liquidity and Capital Resources

In light of ongoing challenging economic conditions and credit concerns, the SEC remains focused on companies' liquidity and capital resources disclosure. Registrants are reminded that in the current environment, clarity and detail in their disclosure pertaining to sources of funding and sources and uses of cash are important in light of the SEC's ongoing scrutiny of these issues.

In April 2012, the Division of Corporation Finance sent a letter to financial institutions that rely on structured note programs for part of their financing. In the letter, the Division of Corporation Finance asked these entities, among other things, to explain how significant structured notes are to their overall plan of financing and liquidity position and to describe any material trends or changes in their reliance on structured notes as a liquidity source. The letter asked these entities to consider including disclosure about these topics in their future Exchange Act reports. A sample of the letter is available at: http://www.sec.gov/divisions/corpfin/guidance/structurednote0412.htm.

Companies are also reminded of the interpretive guidance on the presentation of liquidity and capital resources released by the SEC in September 2010, which:

- reiterated long-standing principles as they apply to disclosure of critical liquidity matters;
- made clear that an SEC-reporting company cannot use financing structures, whether on- or off-balance sheet, designed to mask its reported financial condition;
- emphasized that leverage ratios and other financial measures included in SEC filings must be calculated and presented in a way that does not obscure a company's leverage profile or reported results; and
- addressed divergent practices that have arisen in the context of tabular disclosure of contractual obligations, to focus companies on providing meaningful disclosure about their future payment obligations.

The SEC's September 2010 guidance is available at: http://www.sec.gov/rules/interp/2010/33-9144.pdf.

Continuing Relief Regarding Interactive Data Files

For the foreseeable future, foreign private issuers that prepare their financial statements in accordance with International Financial Reporting Standards (*IFRS*) as issued by the International Accounting Standards Board (*IASB*) are not required to provide their financial statements in an interactive format using XBRL, as set out in an interpretive letter available at: http://www.sec.gov/divisions/corpfin/cf-noaction/2011/caq040811.htm. This is because the SEC rules for preparing interactive data files require companies to use a taxonomy specified on the SEC's website, which the SEC has not done for IFRS. In an April 25, 2012 speech, SEC Deputy Chief Accountant Mike Starr said that he did not know when the SEC would approve a taxonomy for IFRS because currently there are design differences between the taxonomy for US generally accepted accounting principles (*US GAAP*) and the IFRS taxonomy that prevent users from using the same applications and processes for both taxonomies. Mr. Starr's remarks can be accessed at: http://www.sec.gov/news/speech/2012/spch042512ms.htm.

FOCUS AREAS

In this section we discuss areas of disclosure on which the SEC's Division of Corporation Finance has recently focused in its review of periodic reports and areas which have been of particular interest to the investing community in recent years. Given these developments, it is worthwhile for foreign private issuers to pay close attention to these areas as they prepare their Form 20-F this year.

Operating and Financial Review and Prospects

Material Known Trends and Uncertainties

One of the most important aspects of the Financial Review disclosure is the discussion of material known trends and uncertainties, which assists investors in understanding the extent to which historical financial information is indicative of future results. Companies are required to provide disclosure of any trend, demand, commitment, event or uncertainty unless the company is able to conclude either that it is not reasonably likely that the trend, uncertainty or other event will occur or come to fruition, or that a material effect on the company's liquidity, capital resources or results of operations is not reasonably likely to occur. Item 303 of Regulation S-K and the related SEC guidance call for companies to focus on matters that have not had an impact on operations in the past but would have an impact going forward and on matters that have had an impact on reported operations but are not expected to have an impact on future operations.

In preparing the 2012 Form 20-F, companies subject to any of the rules under the Dodd-Frank Act should particularly consider whether these rules are expected to have an effect on results going forward and whether these effects should be disclosed in the Financial Review as known trends or uncertainties.

Asset and Goodwill Impairment

We anticipate that the SEC will continue to focus on asset and goodwill valuation, including companies' key assumptions, causes that may have given rise to an impairment and allocation of assets and liabilities among reporting units. In addition, while companies may not expect that the requirement for impairment testing will have been triggered, the SEC expects early warning disclosure in the Financial Review if an asset or a reporting unit is at risk of failing the impairment test and an actual impairment would be material. This is in line with general guidance in respect of known trends and uncertainties.

Non-GAAP Financial Measures

Companies that disclose non-GAAP financial measures should ensure that the adjustments they make in their preparation of these numbers are consistent from period to period. In this context, the SEC has issued a number of comments questioning whether an expense excluded by a company from a non-GAAP financial measure in one period as non-recurring is in fact a non-recurring expense, as required by Item 10(e)(1)(ii)(B) of Regulation S-K and further explained in Question 102.03 of the non-GAAP financial measures Compliance and Disclosure Interpretations (*C&DIs*). A charge cannot be eliminated as non-recurring if it is reasonably likely to recur within two years or there was a similar charge within the prior two years. The non-GAAP financial measures C&DIs are available at: http://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm.

Loss Contingencies

Companies are reminded that the SEC indicated in 2010 that it intends to focus more closely on compliance with Financial Accounting Standards Board (*FASB*) standards for disclosure required by ASC Subtopic 450-20 Contingencies-Loss Contingencies. In October 2010, the SEC issued a "Dear CFO" letter about the potential risks and costs associated with mortgage and foreclosure-related activities or exposures that highlighted the requirement to disclose loss contingencies in accordance with the accounting standard. We expect this area to continue to be a focus of SEC review. A sample of the letter is available at: http://www.sec.gov/divisions/corpfin/guidance/cfoforeclosure1010.htm.

Segment Reporting

To the extent that companies have responded to challenging economic conditions by reorganizing their operations, they should analyze whether their segment disclosures need to be updated to the extent an internal restructuring has modified how they manage their businesses. In particular, companies should be vigilant in ensuring that segment disclosures made in their Form 20-F comport with statements made in webcasts, earnings calls or investor conferences.

Critical Accounting Policies

The Division of Corporation Finance has indicated that it intends to continue to focus on critical account policies. While the Staff has identified revenue recognition as a policy that may come under specific scrutiny, companies are reminded to review and refresh, where appropriate, their critical accounting policies disclosure and to endeavor to avoid generalizations, boilerplate disclosure and replication of the accounting policies disclosure contained in the notes to the financial statements.

Other Focus Areas

In December 2012 several members of the staff of the Division of Corporation Finance gave a presentation in which they discussed frequent areas of comment in the SEC's review of registration statements and Exchange Act reports. In addition to generally applicable disclosure topics, the staff also discussed focus areas for specific industries, including biotech/pharma, high-tech, banking and insurance. The presentation is available at:
http://www.sec.gov/news/speech/2012/spch120412co.pdf.

Risk Factors

Contacts with US Sanctioned Countries

As noted above, we expect heightened focus from the SEC on dealings with US sanctioned countries, particularly Iran. This continues the trend seen in recent comments to Form 20-F risk factors, where the SEC requested disclosure on contacts in and agreements with entities in US sanctioned countries, soliciting further details such as the amount, the nature and the materiality of any contracts within such sanctioned countries.

Continuing Economic Uncertainty and Credit Risks

Market uncertainty and fluctuating conditions in the global economy and in particular regions continue to affect many companies. Companies should continue to update their risk factors on the economic and fiscal climate as appropriate to reflect developments in 2012 and risks going forward in 2013.

Regional Political Risks

Beyond the economic and political environment in Europe, political uncertainty in any region should also be considered, particularly where such civil unrest and regional turmoil have disrupted operations, or where the company has significant operations that may be disrupted. It may be appropriate to disclose where, for example, political uprisings in the Middle East have affected the company's business (for example, where operations were suspended due to political instability or violence, where upheavals resulted in withdrawal of expatriate employees, or subsequent fluctuations in energy or raw material supplies or prices), or where political instability and uncertainty, whether resulting from regime changes, armed protests or political impasse, have a material effect on the company's operations.

The Euro Zone Crisis

A long-term resolution of the key issues underlying the euro zone crisis has not been achieved. For many companies, the economic and political uncertainty continuing to emanate from the euro zone will require disclosure relating to their exposure to the euro. The nature and extent of the challenges facing the euro zone will continue to evolve over the Form 20-F filing period; at this time, discussions on the outcome are speculative. Given the changes that may arise, companies should continue to address potential significant risks in their disclosure.

The effects of any shift in the composition of the monetary union would be governed by the law in effect at the time, though the shape of this framework is yet to be determined. Political decisions may mitigate disruption resulting from changes to the euro zone. In the meantime, risk factors should highlight specific elements of the situation in the euro zone that are relevant to the company's operations and business. As discussed above, the Division of Corporation Finance has issued guidance on companies' disclosure, including risk factor disclosure, of their exposures to the sovereign debt of certain crisis-affected countries.

2010 Climate Change Guidance – Risk Factor Disclosure

In February 2010, the SEC issued a release on climate change disclosure in which the SEC reaffirmed its stance that companies must avoid boilerplate language when drafting risk factors. Recent staff comments reiterate that risk factor disclosure must be meaningful and specific to the company rather than vague or overbroad. For any category of risk factors and as emphasized by the SEC in relation to climate change disclosure, "registrants should not present risks that could apply to any issuer," and should tailor risk factors accordingly. The SEC guidance is available at: http://www.sec.gov/rules/interp/2010/33-9106.pdf.

Corporate Governance | Risk Management

General Trends

All SEC reporting companies must meet a set of corporate governance requirements that were adopted as part of or pursuant to the Sarbanes-Oxley Act and are being adopted pursuant to the Dodd-Frank Act, many of which require disclosure in the Form 20-F concerning compliance with the relevant requirement. Most of the Sarbanes-Oxley corporate governance requirements apply to foreign private issuers, but only a few of the Dodd-Frank corporate governance requirements apply. Other than the new rules described above relating to the independence of the compensation committee and its advisers, there are no changes to the required Form 20-F corporate governance disclosures.

Accordingly, this year will be the first in a number of years in which US and foreign private issuers alike will not need to focus on any significant new governance or compensation disclosure requirements in their 2012 annual reports. This provides an opportunity for companies to look back at the past several years to determine what worked and what did not work in their disclosures. Additional rulemaking on various outstanding matters under the Dodd-Frank Act, particularly in the executive compensation area, is expected in 2013.

The NYSE and NASDAQ also have a set of corporate governance standards for their listed companies, which sometimes but not always overlap with the Sarbanes-Oxley and Dodd-Frank requirements. In the case of foreign private issuers, the NYSE and NASDAQ standards defer to home country practice except for compliance with certain audit committee requirements.

As a reminder, a foreign private issuer is required to disclose, in a separately captioned section of its Form 20-F (i) a brief summary of any significant ways in which its corporate governance practices (as opposed to the general corporate governance practices of its home country) differ from the NYSE standards or (ii) each NASDAQ requirement that it does not follow and the home country practice that the company follows in lieu of the requirement. Each year, foreign private issuers should compare their corporate governance practices, and home country requirements, with the NYSE or NASDAQ standards to identify such differences for disclosure purposes and to assess if any changes should be made to existing practices.

Disclosure Trends

Today, in an increasingly convergent global corporate governance environment, the pressure for change and transparent disclosure relating to corporate governance practices has intensified for both US companies and foreign private issuers alike. More than ever, the governance regimes of global companies are being scrutinized and critiqued by activist shareholders and proxy advisory organizations, with an increasing number of shareholder proposals being submitted across a broad range of corporate and economic issues. Organizations such as Institutional Shareholder Services Inc. (*ISS*) and Glass, Lewis & Co. publish their proxy voting guidelines and advice not only for US companies, but also for foreign private issuers. These organizations update their guidelines and advice each year, taking into account emerging issues and trends, the evolution of market standards, regulatory changes and, importantly, feedback provided by institutional investors and other stakeholders. Our client publication on the US policy updates issued by ISS in November 2012 can be found at: http://www.shearman.com/iss-publishes-2013-us-corporate-governance-policy-updates-11-26-2012/.

Foreign private issuers are increasingly looking to align their governance regimes and disclosures with a variety of emerging global trends and practices driven to a large extent by robust shareholder activism, regulations in various jurisdictions and peer company practices and disclosures. For example, with the second full year under the mandatory say-on-pay regime of the Dodd-Frank Act, many US companies have reassessed their compensation programs and processes, as well as how they disclose this information to investors. In 2012, the executive summary to the more detailed compensation disclosure and analysis emerged as the foundation of a company's pay-for-performance analysis with an increased use of graphs and charts to aid in understanding of the compensation structures. For foreign private issuers, even absent a mandatory say-on-pay vote and the equivalent US-style compensation disclosure requirements, there is increasing pressure to similarly provide more transparent disclosure and analysis on executive compensation and, particularly, its relationship to risk and performance.

As a reminder, since 2010 two other corporate governance topics are required to be disclosed by US companies: board leadership and the role of the board of directors in risk oversight. Although these requirements are not mandatory for foreign private issuers in their Form 20-F, shareholders increasingly want to understand a board's leadership structure and how public companies identify and manage risk and the risk oversight function of the board of directors. The disclosure on these two topics in 2011 US annual reports ranged from a very brief, high-level overview, sometimes bordering on boilerplate, to a more detailed analysis. Some foreign private issuers also volunteered information on these two topics in their Form 20-F.

- *Board Leadership*: US companies are required to disclose in their annual proxy statements their board leadership structure (specifically, whether the same person serves as the CEO and chairman of the board) and the reasons why they believe that a particular structure is appropriate. US companies that combine the roles of the board chair and CEO positions are also required to disclose whether they have a lead independent director and that person's specific role.
- *Risk Oversight*: US companies are also required to disclose annually the extent of the board's role in the risk oversight of a company, such as how the board administers its oversight function, and the effect this has on the board's leadership structure. Issues to be addressed in the disclosure include:
  - the way in which the company perceives the role of its board in overseeing risk;

- the relationship between the board and senior management in overseeing risk;
- the way in which the board implements and manages its risk oversight function (i.e., through the board as a whole or through a committee such as a specially designated risk committee or the audit committee with added responsibilities);
- whether those responsible for overseeing risk report directly to the board as a whole or to a committee; and
- whether and how the board or committee monitors risk.

Like public company reporting on corporate social responsibility policies and practices discussed below, corporate governance reporting has seen a radical shift within the past 10 years. While primarily prompted by mandatory requirements and guidance in various jurisdictions, increasingly corporate governance reporting is shifting to include voluntary disclosures driven by shareholder and other stakeholder demands and market/peer company practices.

When reviewing the corporate governance disclosures for the 2012 Form 20-F, we would encourage companies to assess whether additional voluntary disclosures, such as on executive compensation, board leadership and risk oversight, would be beneficial in order to provide shareholders with a more transparent and comparative basis of information about the company's governance regime.

Sustainability | Corporate Social Responsibility

In 2012, the SEC did not propose or adopt rulemaking specifically on sustainability/corporate social responsibility (*CSR*) disclosure other than in the discrete areas of conflict minerals, mine safety and government payments discussed above. Nevertheless, the momentum for CSR disclosure continued to gather considerable pace through US and international practices and initiatives. So widespread is CSR reporting now by large companies that the focus in rulemaking discussions has shifted from simply promoting CSR disclosure to additionally standardizing it and integrating it with business and financial reporting. Global trends could spur the SEC to shape this standardization by introducing its own rules.

In its 2011 International Corporate Responsibility Reporting Survey, KMPG reported that where CSR reporting was once merely deemed an "optional but nice" activity, it appears to have become "*de facto* law" for most multinational companies, almost regardless of where they operate around the world. According to KPMG, the percentage of companies reporting on their CSR initiatives between 2008 and 2011 rose from 74% to 83% in the US, 62% to 79% in Canada and 91% to 100% in the UK. The survey also indicated the percentage of corporate reporting by region, with Europe at 71%, the Americas at 69%, but lower results in the Middle East and Africa (61%) and Asia Pacific (49%). All in all, KPMG reported that companies not yet reporting are under significant pressure to start.

In October 2011, the European Commission issued a new policy on CSR and a related strategy for the years 2011-14. The European Commission introduced a new definition of CSR as simply "the responsibility of enterprises for their impacts on society," and called upon enterprises to "have in place a process to integrate social, environmental, ethical and human rights concerns into their business operations and core strategy in close collaboration with their stakeholders." In its Single Market Act communication, the European Commission expressed its intent to propose legislation in the course of 2012 on the transparency of social and environmental information provided by companies in all sectors. The European Commission has not yet proposed this legislation but ran a public consultation to gather stakeholder views on it and is currently conducting an impact assessment to analyze different options for it.

At the United Nations Rio+20 Conference on Sustainable Development in June 2012, the outcome document acknowledged the importance of sustainability reporting and encouraged companies to integrate sustainability information into their reporting cycle. Four participant states, Brazil, Denmark, France and South Africa, formed a group to work with the Global Reporting Initiative and the United Nations Environment Programme to advance corporate sustainability reporting.

OTHER DEVELOPMENTS

In addition to the new laws and regulations, disclosure guidance and focus areas discussed above, 2012 saw developments in US securities regulation that, although they do not directly affect Form 20-F disclosure, will be of interest to foreign private issuers. We summarize these developments in this section.

Use of Social Media

On December 6, 2012, Netflix, Inc. disclosed that it and its chief executive officer Reed Hastings had each received a so-called "Wells Notice" from the staff of the SEC indicating that the staff intended to recommend that the SEC institute an enforcement action for violations of Regulation Fair Disclosure (*Regulation FD*), which prohibits selective disclosure of material nonpublic information. The SEC's action was triggered by a July 3, 2012 Facebook posting on Mr. Hastings' personal account in which Mr. Hastings (who at the time had over 200,000 subscribers) had stated that Netflix members had enjoyed over 1 billion hours of Netflix in June 2012. On the day of the Facebook posting, Netflix shares had their biggest gain in over a month.

The Netflix case serves as a reminder that a company's disclosure controls and procedures should not be limited to the documents that the company files with the SEC, such as its reports on Form 20-F and 6-K, but should encompass other disclosures attributable to the company and its senior management, including press releases, websites, blogs and postings on social media networks, such as Facebook or Twitter. While foreign private issuers are not required to comply with Regulation FD, they generally have policies to prevent the selective disclosure of material nonpublic information as a matter of best practice, to avoid potential liability under the US securities laws and to comply with similar requirements of non-US laws. Foreign private issuers should review and update these policies as necessary to cover social media networks and other new channels of communication.

The SEC has not issued any guidance on whether and how companies can comply with Regulation FD through social media postings. In a May 2011 panel discussion, Thomas Kim, the Chief Counsel of the SEC's Division of Corporation Finance, expressed his personal view that the same analysis applies as for determining whether information posted on a company website is public for purposes of Regulation FD. The SEC issued an interpretive release in August 2008 providing guidance on the use of company websites under the Exchange Act and the antifraud provisions of the federal securities laws. In its 2008 interpretive release, the SEC stated that in evaluating whether information posted on a company website is public disclosure, a company should consider:

- whether the company website is a recognized channel of information distribution;
- whether posting information on the company website disseminates the information in a manner making it available to the securities marketplace in general; and
- whether there has been a reasonable waiting period for investors and the market to respond to the posted information.

Our client publication on the SEC's 2008 interpretive release on the use of company websites is available at: http://www.shearman.com/publications/Detail.aspx?publication=beefc26f-76e4-49a7-8e34-2b307e99deff.

Given the potential enforcement action against Netflix, we believe that companies should use extreme caution disclosing material information through social media and should keep in mind that website postings or the use of social media networks alone may not constitute adequate distribution of material information.

Possible Changes to Foreign Private Issuer Reporting Regime

In a keynote address at PLI – Eleventh Annual Institute on Securities Regulation in Europe held in London on March 8, 2012, Meredith Cross, then the Director of the Division of Corporation Finance, suggested that the regulatory approach taken by the SEC to the disclosure requirements applicable to foreign private issuers may need to change in order to keep up with current market circumstances. Her remarks were directed, in particular, at the reporting and disclosure regime applicable to foreign private issuers whose only trading market is in the United States.

In an address that also covered the SEC's extensive rulemaking mandate under the Dodd-Frank Act and its progress to date, the SEC's recent capital formation initiatives and a discussion of its disclosure review program, Ms. Cross reflected on whether the existing disclosure regime for foreign private issuers was appropriate given the dynamics of today's market. Ms. Cross highlighted that while the number of foreign private issuer registrants has remained relatively stable over time, there has recently been a major change in their profiles. Today, an increasingly large number of foreign private issuers are listed only in the United States and rely on the New York Stock Exchange or NASDAQ as their exclusive trading market. The Division of Corporation Finance has therefore queried whether the existing reporting regime for foreign private issuers, which defers in large part to home market practice, continues to be appropriate.

Under the existing regime, foreign private issuers are not subject to any specific independent ongoing SEC reporting obligations other than the annual report on Form 20-F or 40-F (for Canadian companies). Material information published periodically by a foreign private issuer during the year in accordance with home country or home exchange requirements is also submitted to the SEC on Form 6-K. According to Ms. Cross, the foreign private issuer reporting regime was premised on an assumption that a foreign private issuer's home jurisdiction is its principal price discovery market, and the level of disclosure that supports price discovery and trading in the home market should also support price discovery and trading in the US market.

Ms. Cross identified three questions she believes the Division of Corporation Finance should be addressing when considering these issues:

- Is the current 6-K reporting model the right model for these companies? Does it continue to be the right model for foreign private issuers in general?
- Should companies that are only listed in the United States, whose only price discovery market is an exchange in the United States, who have a significant shareholder base in the United States, and who have no applicable home country disclosure requirements, be subject to a reporting model that is different than a US company? Should these companies not be required to provide quarterly financial information and 8-K level current reporting?
- Should any of these questions apply to foreign private issuers that are also listed on a foreign exchange?

In short, the Division of Corporation Finance is concerned to ensure that the reporting requirements applicable to foreign private issuers provide appropriate investor protections. Ms. Cross did not provide a schedule for the Division of Corporation Finance's deliberations on these issues. Nor did she note the myriad issues that will need to be considered alongside any proposed changes, such as whether any changes to the system will detract from the US market's attractiveness to foreign private issuers going forward. Ms. Cross's full keynote address can be accessed at: http://www.sec.gov/news/speech/2012/spch030812mc.htm.

Change in SEC Confidential Filing Policy for Securities Act Registration Statements

Prior to December 8, 2011, foreign issuers were able to submit initial registration statements under the Securities Act of 1933 (*Securities Act*) to the SEC for review on a confidential basis. On December 8, 2011, the SEC announced that it will review initial registration statements of a foreign issuer on a confidential basis only if such issuer is: (1) a foreign government registering its debt securities; (2) a foreign private issuer that is listed or is concurrently listing its securities on a non-US securities exchange; (3) a foreign private issuer that is being privatized by a foreign government; or (4) a foreign private issuer that can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction. The revised confidential filing policy can be found at: http://www.sec.gov/divisions/corpfin/internatl/nonpublicsubmissions.htm.

This non-public submission policy is separate from the confidential registration statement review procedures available to "emerging growth companies" under the Jumpstart Our Business Startups Act (*JOBS Act*). Foreign private issuers that meet the criteria set out in the JOBS Act are eligible to be treated as emerging growth companies.

Foreign private issuers, whether submitting draft registration statements pursuant to the revised confidential filing policy or as an emerging growth company under the JOBS Act, will be required to file their previously submitted draft registration statements publicly and resubmit all previously submitted response letters to staff comments as correspondence on EDGAR. For foreign private issuers taking advantage of the revised confidential filing policy, these filings must take place at the time they publicly file their registration statements. All staff comment letters and issuer response letters will become publicly available on EDGAR after the conclusion of the review process in accordance with SEC staff policy.

The SEC's change in policy has the effect of adding more pressure on foreign companies accessing US capital markets for the first time to resolve all material issues before the initial filing of their registration statements. In addition, underwriters of such offerings should also obtain all necessary internal commitment committee approvals prior to the initial confidential filing.

Work Plan for the Consideration of Incorporating IFRS into the Financial Reporting System for US Companies

On July 13, 2012, the SEC's Office of the Chief Accountant published its final report on the SEC's work plan for the consideration of incorporating IFRS into the financial reporting system for US companies. The report stated that it became apparent to the SEC staff that designating IFRS as authoritative for purposes of US companies' financial statements was not supported by the vast majority of participants in the US capital markets and would not be consistent with the methods of incorporation followed by other major capital markets around the world. On the other hand, the SEC staff found substantial support for exploring other methods of incorporating IFRS (such as an endorsement mechanism or continued convergence of US GAAP and IFRS) that demonstrate the US commitment to the objective of a single set of high-quality, globally accepted accounting standards. The report noted that the SEC's future involvement with IFRS may take many different forms, including the SEC staff's review of filings of foreign private issuers that prepare their financial statements in accordance with IFRS, participation in the International Organization of Securities Commissions (*IOSCO*), interactions with other securities regulators on accounting matters, and review and commentary on the International Accounting Standards Board's (*IASB*) standards. The final report can be found at: http://www.sec.gov/spotlight/globalaccountingstandards/ifrs-work-plan-final-report.pdf.

SEC Study on the Cross-Border Scope of the Private Right of Action under Section 10(b) of the Exchange Act

When confronted with questions about the extraterritorial reach of the US securities laws, US courts had historically applied a "conduct and effects test," i.e., they held that Section 10(b) of the Exchange Act and other antifraud provisions applied when there was significant US fraudulent conduct that directly caused the plaintiff's losses or when there were significant effects on the US securities markets. In its decision in *Morrison v. National Australia Bank, Ltd.* in June 2010, the US Supreme Court rejected the conduct and effects test and restricted Section 10(b) to claims in connection with the purchase or sale of a security listed on an American stock exchange or the purchase or sale of any other security in the United States. Section 929P of the Dodd-Frank Act, enacted in light of the *Morrison* decision, restored a version of the conduct and effects test, but only for actions brought by the SEC and by the US Department of Justice. Section 929Y of the Dodd-Frank Act directed the SEC to solicit public comments and conduct a study to determine the extent to which private rights of action under the antifraud provisions of the Exchange Act should cover extraterritorial claims.

In April 2012, the SEC released the study required by Section 929Y of the Dodd-Frank Act. The study analyzed various arguments for and against the conduct and effects test and various arguments for and against the transactional test developed in *Morrison* and described several options for the US Congress to consider in this area, some of which would restore a conduct and effects test, and some of which would supplement and clarify the transactional test. The US Congress has not taken any action in light of the SEC's study, and it is not clear if and when further action will be taken. As such, the transactional test developed in *Morrison* and the line of cases that have applied and interpreted the *Morrison* decision continues to govern the extraterritorial application of Section 10(b) in private suits. The SEC's study is available at: http://www.sec.gov/news/studies/2012/929y-study-cross-border-private-rights.pdf.

Jumpstart Our Business Startups (JOBS) Act

On April 5, 2012, President Obama signed into law the Jumpstart Our Business Startups Act, also known as the JOBS Act. The JOBS Act has broad implications for many companies, including foreign private issuers, seeking to access the US capital markets, as it reduces some of the regulatory burdens of capital raising and ongoing SEC reporting.

In particular, the JOBS Act created a new class of issuers called "emerging growth companies" (*EGCs*), which are defined as companies, whether US domestic or foreign private issuers, that have annual gross revenues of less than US$1 billion. A company that qualifies as an EGC will retain its status until the earliest of:

- the last day of the fiscal year following the fifth anniversary of its IPO in the United States;
- the last day of the fiscal year during which it has gross revenues of US$1 billion or more;
- the date on which it has issued more than US$1 billion in non-convertible debt during the previous three years; and
- when it becomes a "large accelerated filer," generally meaning that its public float is US$700 million or more.

EGCs benefit from a significant relaxation of several restrictions relating to the securities offering process and, in particular, to IPOs. The principal rule changes relevant to foreign private issuers:

- affect communications prior to and during a securities offering;
- permit confidential submission of IPO registration statements for all EGCs, including foreign private issuers that do not qualify under the Division of Corporation Finance's confidential submission policy for foreign private issuers;
- reduce the number of years of financial statements and financial information required for inclusion in an IPO prospectus; and
- relax the restrictions relating to the publication of pre- and post-transaction research by investment banks underwriting an IPO. In practice, however, most major investment banks have so far not changed their pre-deal research practices for US IPOs, though there generally has been a shortening of the post-IPO quiet period from 40 days to 25 days.

The JOBS Act also reduced some public company reporting and other requirements for EGCs for as long as they retain their status, the most significant of which for foreign private issuers relates to the Sarbanes-Oxley auditor attestation report on their internal control over financial reporting. While EGCs must continue to provide an annual management's assessment of the effectiveness of their internal control over financial reporting, the JOBS Act exempts EGCs from Sarbanes-Oxley Section 404's requirement to obtain an annual attestation report on their internal control over financial reporting from their auditors. The existing requirement for CEOs and CFOs to certify public companies' financial statements is not affected.

The JOBS Act also includes provisions:

- to liberalize the use of publicity for private placements and Rule 144A offerings;
- to permit crowdfunding for US domestic companies up to US$1 million in any 12 months, subject to SEC rulemaking; and
- that directed the SEC to create a new exemption (or modify an existing exemption, such as that provided by Regulation A) for public offerings of equity securities, debt securities and debt securities convertible or exchangeable into equity securities that, in the aggregate, do not exceed US$50 million in any 12-month period.

The SEC has published a significant amount of JOBS Act guidance, which can be accessed through the SEC's JOBS Act website at: http://www.sec.gov/spotlight/jobs-act.shtml.

The most pertinent links for foreign private issuers are set out below:

- Generally Applicable FAQs: http://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm
- Confidential Submission Process for Emerging Growth Companies FAQs: http://www.sec.gov/divisions/corpfin/guidance/cfjumpstartfaq.htm

Further information relating the SEC's proposed changes to restrictions on publicity in Rule 144A offerings and private placements may be found in our client publication available at: http://www.shearman.com/jobs-act-sec-proposes-rules-allowing-general-solicitation-and-advertising-in-private-placements-under-rule-506-of-regulation-d-and-rule-144a-09-05-2012/.

SEC Updates

Departure of SEC Chairman and Changes in Senior Staff

After nearly four years in office, SEC Chairman Mary Schapiro stepped down in December 2012 and Commissioner Elisse Walter was designated as the new Chairman. Additionally, the SEC announced, in December 2012, the departures of Division of Corporation Finance Director Meredith Cross, Division of Trading and Markets Director Robert Cook and General Counsel Mark Cahn and, in January 2013, the departure of Enforcement Director Robert Khuzami. The SEC has named Lona Nallengara, a former Shearman & Sterling partner, as Acting Director of the Division of Corporation Finance and John Ramsay as Acting Director of the Division of Trading and Markets and has appointed Geoffrey Aronow as the agency's General Counsel. It remains to be seen whether there will be any changes in the SEC's policies and priorities as a result of these developments.

Updated Compliance and Disclosure Interpretations

The Division of Corporation Finance last updated its Compliance and Disclosure Interpretations on December 4, 2012. The Compliance and Disclosure Interpretations are available at: http://www.sec.gov/divisions/corpfin/cfguidance.shtml.

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Updated Financial Reporting Manual

The Division of Corporation Finance last updated its Financial Reporting Manual on January 18, 2013. The Financial Reporting Manual is available at: http://www.sec.gov/divisions/corpfin/cffinancialreportingmanual.shtml.

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