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Preparing your 2025 Form 20-F: Hot topics and developments to watch in the U.S.

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Recent developments impacting FPIs

Section 16(a) insider reporting

- On December 18, 2025, President Trump signed the National Defense Authorization Act for Fiscal Year 2026
- Buried in this is Section 8103, which extends the application of insider reporting obligations under Section 16(a) of the Exchange Act to directors and officers of FPIs, which previously only applied to U.S. domestic companies:
 - Directors and officers must report equity holdings and most equity transactions (including purchases and sales, gifts and compensation related transactions (e.g., equity compensation grants, sales to cover exercise price payments and tax withholding obligations))
 - The rules do not apply to +10% stockholder of FPIs
 - The existing exemption for FPIs from Section 16(b) “short-swing” liability is retained
- The amendments to Section 16(a) will go into effect on March 18, 2026
- FPIs should prepare their directors and officers to comply with Section 16 reporting obligations
- To comply, directors and officers will be required to obtain SEC filing codes (if they do not have them already) to file on the EDGAR Next platform
- While the amendments to Section 16(a) do not affect Form 20-F, the new requirement for directors and officers of FPIs to publicly report their share ownership pursuant to Section 16(a) from March 18, 2026 would mean that the exemption in Item 6 of Form 20-F permitting individualized compensation and share ownership disclosure to be omitted from Form 20-F if such disclosure has not been publicly disclosed, would no longer be available

SEC looks to revisit FPI definition

- On June 4, 2025, the SEC issued a concept release, seeking public comment on the definition of “Foreign Private Issuer”
- The comment period expired as of September 8, 2025 and there is currently no indication of any timing on any proposed rulemaking

Recap of 2024 form changes and practice tips

Cybersecurity

- In 2023, the SEC adopted final rules mandating cybersecurity incident and risk management disclosures for public companies
- As of early January, there have been 24 SEC comment letters that included comments on cyber disclosures, principally focusing on:
 - Disclosure of management's relevant expertise
 - Integration of cyber risk management processes with overall risk management
 - Impact of cyber risks on a company
 - Use of third parties to manage cyber risks and the processes to identify cyberthreats
- Cybersecurity risk disclosures are being closely scrutinized by the SEC and private plaintiffs so avoid overstating defenses, expertise, processes or readiness to address a cybersecurity threat
- SEC continues to focus on cybersecurity risk factors using hypothetical wording after a cybersecurity risk has materialized
- FPIs must tag required disclosures in Inline XBRL
- Reminder that material cybersecurity incidents must be disclosed on Form 6-K

Insider trading policies

- FPIs must :
 - disclose whether they have adopted (and if not, an explanation of why not) insider trading policies and procedures that are reasonably designed to promote compliance with applicable insider trading laws (Item 16J of Form 20-F)
 - file their insider trading policy as an exhibit to Form 20-F
- These disclosures will be subject to the SOX certifications and must be tagged in Inline XBRL
- The company's insider trading policy should be filed as an exhibit to Form 20-F

Hot disclosure topics and SEC focus areas

Macroeconomic and political environment

- Registrants should make adequate disclosures related to the direct and indirect risks associated with:
 - Recent tariff policies and related uncertainty
 - FPIs should consider the changing landscape of tariffs and the related impact on their business, including the risks presented by the uncertainty around both the extent of the U.S. tariffs and any retaliatory measures adopted in response
 - Over 400 FPIs discussed tariffs in risk factors disclosure as part of Form 20-Fs filed in 2025
 - Geopolitical conflicts and related risks, including cybersecurity risks, ongoing supply chain challenges and volatility in commodity prices
 - Artificial Intelligence (AI)
 - FPIs should consider a principles-based disclosure approach about how they use AI and both the opportunities and risks related to its use
 - The SEC has been increasingly focused on “AI washing”
 - Impact relating to developments in crypto assets markets
 - FPIs should evaluate their crypto-asset exposure, including exposure to liquidity risks, financing risks and risks related to legal proceedings, investigations or regulatory changes related to crypto assets
 - Sticky inflation and continued impact of interest rates
 - Consider additional disclosure in OFR trends or in the period-on-period discussion on continued impact of inflationary pressures
 - Assess continuing impact of current interest rate levels and ability to access capital markets
 - Be mindful of the SEC’s focus on China-specific disclosures, including obligations under the Holding Foreign Companies Accountable Act (HFCAA)
 - Sanctions and any activity in sanctioned countries or with sanctioned individuals or entities
 - Consider whether disclosure of such activities, or associated risks, is appropriate
 - SEC has sent numerous comment letters seeking more detail about disclosures related to dealings in sanctioned countries

Hot disclosure topics and SEC focus areas (cont.)

DEI

- The Trump administration issued twin executive orders (January 20 and January 21, 2025) focused on removing DEI programs both in the government and private sectors
- Companies should evaluate whether their businesses have been or may be affected by recent developments in DEI and consider updates to Form 20-F disclosures accordingly
- FPIs have taken a range of approaches from removing DEI disclosures in their Form 20-Fs filed in 2025, from adapting language to focus more on inclusion, to inserting explanations that certain DEI-related disclosures are mandated by home country requirements
- In December 2024, the Fifth Circuit vacated the SEC's order approving Nasdaq board diversity rules

Climate-related reporting

- In September 2025, the Eighth Circuit issued an order continuing a hold on petitions for review of the SEC's climate disclosure rules, effectively requiring the SEC to resume defense of its rules or propose new rules
- However, climate change regulation is not a priority for the current administration
- In the meantime, FPIs should continue to follow general principles of good disclosure and disclose:
 - Climate change-related risks and opportunities in a company's description of business, legal proceedings, risk factors and management's discussion and analysis of financial condition and results of operations
 - Impact of pending or existing climate-change related legislation, regulations, and international accords
 - Indirect consequences of regulation or business trends
 - Physical impacts of climate change
- In addition, FPIs should take note of the disclosure rules adopted in the EU and California
 - California's Voluntary Carbon Market Disclosures Act may be applicable to foreign companies operating in California and is intended to address "greenwashing"

Hot disclosure topics and SEC focus areas (cont.)

Financial reporting - APMs & other reporting issues

- Non-GAAP measures continue to feature prominently in SEC comment letters
- The SEC's CD&Is relating to non-GAAP measures include guidance on:
 - Non-GAAP adjustments or recognition principles that could result in the presentation of a non-GAAP measure being misleading
 - The staff's interpretation of "more prominent"
 - The need to properly label and describe non-GAAP measures
 - How extensive disclosure about the nature of the non-GAAP measure does not necessarily prevent that measure from being misleading
- SEC has focused on discrepancies between disclosure in the OFR section and statements made in an earnings call
- In November 2024, the FASB issued an ASU requiring public companies to disclose, in interim and annual financial reports, additional information about certain expenses in the notes to financial statements

Enforcement actions and litigation

- 2025 has been a transition year for the SEC Division of Enforcement under the leadership of new Chairman Paul S. Atkins
- This brought a renewed focus on fraud and other egregious misconduct that genuinely harms investors
 - We expect a shift away from enforcement actions premised on emerging disclosure areas such as climate rules or greenwashing
 - We don't expect the same type of novel internal controls theories against public companies that were asserted by the prior administration will be pursued
- The SEC will likely continue to investigate traditional accounting and financial reporting matters and insider trading
- In September 2025, the SEC announced the creation of a Cross-Border Task Force to investigate violations of U.S. securities laws by foreign-based companies

Horizon scanning

- The SEC's Spring 2025 regulatory agenda focuses on easing compliance burdens for companies and facilitating capital formation
- Marks a step away from the prior administration's rulemaking priorities like human capital management and corporate board diversity rules
- We expect an ambitious deregulatory agenda to take shape in 2026, including initiatives to rationalize disclosure practices to reduce compliance burdens and to simplify pathways for raising capital

Your team



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