



2023 SEC Reporting Insights

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TABLE OF CONTENTS

Introduction	3
SEC Reporting Reminders	3
Cybersecurity Disclosure Rules	3
Recovery of Erroneously Awarded Compensation	6
Climate Change Disclosures	8
Macroeconomic Conditions	9
Non-GAAP Financial Measures	11
Select Staff Comment Letter Topics	13
Commission and Staff Activities	17
Final Rules	17
Staff Guidance	18

INTRODUCTION

In 2023, the SEC issued several new rules under Chair Gary Gensler's agenda, but the highly anticipated final climate change disclosure rules have not yet been issued as of the date of this publication. However, the SEC adopted several other rules that will be newly effective in 2023, including the disclosure rules related to cybersecurity, insider trading, share repurchases, and the recovery of erroneously awarded compensation, among others. The new rules demonstrate the SEC's continued focus on highly prescriptive rules intended to enhance comparability across registrants and provide information to investors.

Registrants' reporting practices continue to evolve in response to rules on the SEC's agenda and the economy. Registrants are monitoring activities and considering disclosures on environmental, social, and governance (ESG) issues, particularly climate change matters, in response to the SEC's proposal in 2022, SEC staff comment letters, and investor demands. Moreover, the volatile macroeconomic environment, including higher interest rates, inflation, and geopolitical conflict, continues to affect disclosures. Registrants also should consider staff comments and guidance in the form of sample comment letters and compliance and disclosure interpretations (C&DIs).

Our publication includes key disclosure and reporting reminders for upcoming filings and summarizes the SEC's rulemaking and other activities that affect financial reporting.

SEC REPORTING REMINDERS

CYBERSECURITY DISCLOSURE RULES



SEC REFERENCE

Final Rule: [Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure](#)

Regulation S-K, Item 106

Item 1.05 of Form 8-K

Item 16K of Form 20-F

The SEC adopted new rules that require registrants to disclose material cybersecurity incidents in Form 8-K. The rules also require annual disclosures about a registrant's policies and procedures to identify and manage:

- ▶ Cybersecurity risk
- ▶ The board's oversight of risks from cybersecurity threats
- ▶ Management's role in assessing and managing material risks from cybersecurity threats

The amendments apply to virtually all registrants and the timeline until effectiveness is short. Most registrants will be required to make the new annual disclosures in their 2023 reports on Form 10-K (or Form 20-F) and to report material cybersecurity incidents in Form 8-K by December 18, 2023. Registrants should proactively engage with legal counsel and other advisors, as necessary, to adequately prepare for assessing the materiality of any cybersecurity incidents and to implement the new disclosure requirements.

Cybersecurity Incident Disclosures in Form 8-K

New Item 1.05 of Form 8-K requires a registrant to disclose a cybersecurity incident within four business days from the date it determines the incident(s) to be material, unless the U.S. Attorney General notifies the SEC that such disclosure

poses a substantial risk to national security or public safety.¹ While the materiality determination may occur upon the same date or after the incident's discovery, it must be made without "unreasonable delay." Foreign private issuers (FPIs) must make similar disclosures on Form 6-K.

The materiality evaluation for a cybersecurity incident is consistent with the evaluation of any other event or risk that a registrant may face. That is, an incident is material if "*there is substantial likelihood that a reasonable shareholder would consider it important*" or if it would have "*significantly altered the 'total mix' of information made available*" from the perspective of a reasonable investor. The materiality determination may require considerable judgment as registrants must consider all relevant facts and circumstances, including both quantitative and qualitative factors.

When required, the registrant must disclose the material:

- ▶ Aspects of the scope, nature, and timing of the cybersecurity incident²
- ▶ Impact or reasonably likely material impact on the registrant's financial condition and results of operations

If the registrant does not have the information required to make these disclosures at the time of filing, it must include a statement to that effect and file an amendment to Form 8-K within four business days after the information becomes available. The rule does not require a registrant to update information about the incident in its Form 8-K, Form 10-Q or Form 10-K. However, a registrant has a duty to update when it determines prior disclosure was untrue (or omitted a material fact necessary to make the disclosure not misleading) at the time it was made or becomes materially inaccurate after it is made.

Disclosures made in Item 1.05 are eligible for the limited safe harbor from liability under Section 10(b) or Rule 10b-5 under the Exchange Act.

Risk Management, Strategy, and Governance Disclosures

New Item 106 of Regulation S-K and Item 16K of Form 20-F requires a registrant to disclose information about its cybersecurity risk management, strategy, and governance in sufficient detail for a reasonable investor to understand. Although Item 106 and Item 16K only apply to annual reports on Forms 10-K and 20-F, registrants should consider the materiality of cybersecurity risks and incidents when preparing disclosures in connection with registration statements.

Risk Management and Strategy

REQUIREMENT	REGISTRANTS MUST DESCRIBE:	REGISTRANTS MUST, AT A MINIMUM, ADDRESS:
Risk Management and Strategy Item 106(b)	▶ Their processes, if any, for assessing, identifying, and managing material risks from cybersecurity threats ▶ Whether any risks from cybersecurity threats have materially affected (or are reasonably likely to materially affect) their business strategy, results of operations, or financial conditions	▶ Whether and how they have integrated cybersecurity processes into their overall risk management process ▶ Whether the registrant engages third parties in connection with such processes ▶ Whether the registrant has processes to oversee and identify material risks from cybersecurity threats associated with third-party service providers

¹ The initial delay period of up to 30 days may be extended by the U.S. Attorney General up to a total of 90 days after which the SEC will consider additional requests for delay and potential relief through exemptive order.

² Specific or technical information about the registrant's cybersecurity system, planned response to the incident, or potential system vulnerabilities is not required.

REQUIREMENT	REGISTRANTS MUST DESCRIBE:	REGISTRANTS MUST, AT A MINIMUM, ADDRESS:
		▶ Any other information necessary for a reasonable investor to understand their cybersecurity processes
Governance Item 106(c)	▶ The board's oversight of risks from cybersecurity threats and any board committee or subcommittee responsible for the oversight of these risks and the related processes by which such committee is informed about the risks ▶ Management's role in assessing and managing material risks from cybersecurity threats	▶ Which management positions or committees are responsible for assessing and managing cybersecurity risks ▶ The relevant expertise of management responsible for assessing and managing cybersecurity risks ▶ How management or committees are informed about and monitor cybersecurity incidents ▶ How such information is reported to the board or board committee



SEC REFERENCE

Definitions in Item 106 of Regulation S-K:

- ▶ **Cybersecurity Incident:** An unauthorized occurrence, or a series of related unauthorized occurrences, on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.
- ▶ **Cybersecurity Threat:** Any potential unauthorized occurrence on or conducted through a registrant's information systems that may result in adverse effects on the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.
- ▶ **Information System:** Electronic information resources, owned or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of the registrant's information to maintain or support the registrant's operations.

BDO INSIGHTS — ROBUST PROCESSES AND CONTROLS ARE NEEDED TO ADDRESS CYBERSECURITY DISCLOSURE REQUIREMENTS

The definition of a cybersecurity incident includes “a series of related unauthorized occurrences” to reflect that cyberattacks can compound over time, rather than occurring at a point in time. The SEC gave the following examples:

- ▶ The same malicious actor engages in small but continuous cyberattacks against the registrant.
 - ▶ Multiple actors attack the same vulnerability in a series of related attacks.
- Evaluating whether a series of related unauthorized occurrences are collectively material to the registrant may require the application of professional judgment, based on the facts and circumstances.
- Moreover, the definition of an information system includes resources “used by” the registrant. Accordingly, the registrant must determine whether it is required to report cybersecurity incidents that occur on third-party systems used by the registrant.
- Registrants must have strong processes and controls in place to evaluate such events for disclosure.

Effective Dates

The amendments are applicable to virtually all registrants, except for asset-backed issuers and Canadian issuers in the Multi-Jurisdictional Disclosure System (MJDS).³ The effective dates are as follows:

	ALL REGISTRANTS OTHER THAN SRCs	SMALLER REPORTING COMPANIES (SRCs)
Cybersecurity incident disclosures required in Form 8-K (or in Form 6-K for FPIs)	December 18, 2023	June 15, 2024
Risk, strategy, and governance disclosures in Form 10-K (or in Form 20-F for FPIs)	Fiscal years beginning on or after December 15, 2023	Fiscal years beginning on or after December 15, 2023

RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION



SEC REFERENCE

Final Rule: [Listing Standards for the Recovery of Erroneously Awarded Compensation](#)
Exchange Act Rule 10D-1

In 2022, the SEC adopted Exchange Act Rule 10D-1 (“Rule 10D-1”), which requires the New York Stock Exchange (NYSE) and Nasdaq Stock Market (Nasdaq) to implement listing standards that require issuers to implement policies and make disclosures about the recovery (or “clawback”) of erroneously awarded incentive compensation. The NYSE’s and Nasdaq’s listing standards were effective on October 2, 2023. NYSE and Nasdaq listed registrants (“issuers”) must adopt compliant clawback policies by December 1, 2023.

Clawback Requirements

Under the final rules, a clawback analysis is triggered by an accounting restatement that corrects an error that:

³ Find further information about the MJDS for Canadian issuers in [Topic 16](#) of the Division of Corporation Finance’s Financial Reporting Manual.

- ▶ Is material to the previously issued financial statements (a “Big R” restatement)
- ▶ Would result in a material misstatement if the error was corrected or remained uncorrected in the current period (a “Little R” restatement)

In making the materiality determination, an issuer must consider the quantitative and qualitative effect of the error from the perspective of a reasonable investor based on the totality of information that an issuer discloses. Out-of-period adjustments (that is, prior period errors corrected in the current period) are not considered Little R restatements and are not subject to the clawback requirements.

Once an issuer has determined an accounting restatement is necessary, the issuer must evaluate whether incentive-based compensation awarded to any current or former executive officers during the three years preceding “the date the issuer is required to prepare the restatement” must be recovered.

- ▶ The amount to be recovered is the difference between the amount of incentive-based compensation “received” by the executive and the amount that the executive should have received based on the restated financial measure(s). Under the transition period, the clawback policy only applies to incentive-based compensation received on or after October 2, 2023, the effective date of the rule (even if the incentive compensation was granted before that date).
- ▶ Such recovery does not require misconduct by an executive or consideration of whether the executive had responsibility for the erroneous financial statements.

The following table describes some key terms in the rule:

TERM	DESCRIPTION
Executives⁴	▶ Includes anyone who performs policy-making functions for the issuer. • For example, the issuer’s president, principal financial officer, and vice president in charge of a business unit, division, or function.
Incentive-based compensation	▶ Applies broadly⁵ to an issuer’s incentive-based compensation and includes bonuses, raises, and other equity or cash awards earned based on the achievement of a financial measure. Bonuses, raises, and other equity awards that are not tied to a financial performance measure are excluded. ▶ Incentive-based compensation is received in the fiscal year in which the award is attained, regardless of when payment occurred, and is computed on a pre-tax basis.
Date the issuer is required to prepare the restatement	▶ Occurs on the earlier of: • The date the issuer’s board (or committee thereof) or officer(s) concludes, or reasonably should have concluded, that the issuer is required to prepare an accounting restatement. • The date a court, regulator, or other legally authorized body directs the issuer to prepare an accounting restatement.

There are limited exceptions whereby issuers are not required to collect erroneously awarded compensation, including:

⁴ C&DIs 121H.02 and 121H.03 give guidance on which persons are considered named executive officers and require individualized disclosure pursuant to new Item 6.F of Form 20-F and Item B.(19) of Form 40-F.

⁵ Also refer to C&DI 121H.04.

- ▶ When expenses paid for collection would exceed the amount of the recovery and the issuer has made a reasonable attempt to recover.
- ▶ Recovery would violate home country law.
- ▶ Recovery would cause a tax-qualified retirement plan to fail to meet the requirements of the Internal Revenue Code.

Disclosure Requirements

The rules require issuers to file their clawback policies as an exhibit to their annual reports and make several new disclosures in annual reports and proxy and information statements.

Annual Reports

Issuers must evaluate two new checkboxes on the cover pages of Forms 10-K, 20-F, and 40-F, including:

- ▶ Whether the financial statements reflect the correction of errors
- ▶ Whether such corrections necessitated a clawback analysis

Proxy and Information Statements

Issuers must disclose:

- ▶ The date the accounting restatement was required to be prepared
- ▶ The total erroneously awarded compensation, including how the amount was calculated (or an explanation about why the amount has not been determined)
- ▶ The total erroneously awarded compensation outstanding at the end of the most recently completed fiscal year (including the name of the executive officer and the amounts that have been outstanding for 180 days or more since the determination of such amounts)
- ▶ Any estimates used in determining the amount to be recovered for incentive-based compensation tied to stock price or total shareholder return
- ▶ An explanation of any clawback analyses that did not result in the recovery of erroneously awarded compensation
- ▶ Recovered amounts that were deducted from the executive's compensation in the Summary Compensation Table required by Item 402(c) of Regulation S-K

CLIMATE CHANGE DISCLOSURES



SEC REFERENCE

[Staff Sample Letter to Companies on Climate Change Disclosures](#)

While the SEC has not yet finalized its climate change disclosure rules, the staff continues to issue comments on climate-related matters in filings. These comments generally are similar to those in the staff's sample letter to companies on climate change disclosures, which is an excellent resource to help registrants think about climate disclosures in the context of their own SEC filings.

The staff continues to question:

- ▶ Inconsistencies between a registrant's climate-related disclosures in its other reports (for example, its corporate social responsibility report) and its SEC filings
- ▶ A lack of disclosure about the:
 - Physical effects of climate change, such as the severity of weather and the associated financial and operational effect (and whether such effects are material).

- Direct or indirect effects from climate-related legislation, regulations, and international accords.
- Indirect effects of regulation or business trends, including decreased demand for goods with significant greenhouse emissions, as well as higher risk for a decline in revenues or reputation for registrants that produce goods with material greenhouse emissions.
- Increased competition to develop new climate friendly products, as well as increased demand for those products.

The sample letter reminds registrants of their duty to disclose material information even if not expressly required. Registrants that release separate corporate social responsibility reports with more expansive climate-related disclosures should consider whether to include similar disclosures in their SEC filings. Registrants may also need to revisit their disclosure controls and procedures to determine whether material climate-related information is appropriately considered for disclosure. Registrants are encouraged to prepare supporting documentation of their materiality assessments when they conclude that the disclosures are not material.

BDO INSIGHTS – CLIMATE CHANGE DISCLOSURE RULES

The SEC released its climate change disclosure proposal in March 2022 and received thousands of comment letters and continues to prepare its final rules. Meanwhile, Europe and the rest of the world have issued new sustainability and ESG reporting regulations. The International Sustainability Standards Board (ISSB) issued its inaugural International Financing Reporting Standards (IFRS) Sustainability Disclosure Standards in June 2023, and the European Commission adopted the European Sustainability Reporting Standards for use by all companies subject to the Corporate Sustainability Reporting Directive. More information on global developments can be found in BDO's [International Sustainability Reporting Bulletin](#).

More recently, California recently passed legislation of its own ([SB-253: Climate Corporate Data Accountability Act](#) and [SB-261: Greenhouse Gases: Climate-Related Financial Risk](#)), which will require public and private U.S. companies that do business in California to make certain climate-related disclosures beginning in 2026.

We encourage all registrants to stay abreast of the evolving ESG regulatory landscape while the SEC finalizes its rules.

MACROECONOMIC CONDITIONS

The macroeconomic environment in the U.S. and around the world continues to be volatile. After inflation rates hit a 40-year high in 2022, the Federal Reserve steadily increased interest rates to combat inflationary pressures. Stock market and foreign currency volatility, financial institution failures, ongoing supply chain issues, outbreaks of new COVID-19 strains, and ongoing geopolitical conflicts (collectively, with inflation and rising interest rates, “macroeconomic conditions”) continue to present risks, uncertainties, and challenges for many registrants in 2023. These macroeconomic conditions may affect several areas of accounting and disclosure in SEC filings. In connection with upcoming annual and other interim filings, registrants should consider the following questions to inform their disclosures:

REQUIREMENT	DISCLOSURE CONSIDERATIONS
Regulation S-K, Item 101 <i>Description of Business</i>	▶ Has the registrant changed, or does it plan to change, its operations, strategies, engagement with customers, or approaches to supply chain in response to macroeconomic conditions?
Regulation S-K, Item 105 <i>Risk Factors</i>	▶ Do the macroeconomic conditions present specific and unique risks to the registrant (vs. a general risk factor that would apply to all registrants)?

REQUIREMENT	DISCLOSURE CONSIDERATIONS
	▶ Do the lingering effects of the COVID-19 pandemic create new risks and uncertainties that have not been previously disclosed?
Regulation S-K, Item 303 <i>Management's Discussion and Analysis (MD&A)</i>	▶ Are there known trends and uncertainties associated with the macroeconomic conditions that have, or are reasonably likely to have, a material impact on the entity's financial condition, results of operations, or liquidity? ▶ Are critical accounting estimates subject to sensitivity due to changes in macroeconomic conditions? ▶ Are "early warning" disclosures included about the potential near-term impact of estimates that are susceptible to change?
Regulation S-K, Item 305 <i>Quantitative and Qualitative Disclosures about Market Risk</i>	▶ How has exposure to market risks, such as interest rate risk, credit risk, foreign currency risk, and commodity price risk, affected the registrant? ▶ How is the registrant managing these risks?
Financial Statement Accounting⁶ and Disclosures	▶ Do the macroeconomic conditions: • Present uncertainties and risks that could potentially have significant effects on the amounts reported in the financial statements?⁷ • Create concentrations that present greater risk to the registrant's financial condition or results of operations (for example, customers, suppliers, products, and geographic locations)? • Trigger impairment or remeasurements, and have the effects been appropriately considered in valuation analyses (for example, with respect to financial instruments, goodwill, other long-lived assets, inventory)? • Affect significant estimates in the financial statements (for example, forecasts, discount rates, variable consideration)?

BDO INSIGHTS — MACROECONOMIC DISCLOSURES

Inflation and rising interest rates, among other macroeconomic conditions, may each create potentially unique risks, uncertainties, and operational and financial statement effects. The staff has questioned registrants that describe these conditions as **one** risk, uncertainty, or impact. We encourage registrants to evaluate the separate effects of each macroeconomic condition to determine the appropriate level and granularity of disclosure in their filings.

⁶ Refer to BDO's publication [Financial Reporting Considerations: Inflation and Rising Interest Rates](#) for more insight about the accounting implications of inflation and rising interest rates.

⁷ Refer to Accounting Standards Codification Topic 275, *Risks and Uncertainties*.

NON-GAAP FINANCIAL MEASURES



SEC REFERENCE

Regulation G

Regulation S-K, Item 10(e)

Non-GAAP [Compliance & Disclosure Interpretations](#)

The use of non-GAAP measures and related disclosures remain a top focus area of the staff in its comment letters. Many of these comments are consistent with the staff's updated C&DIs from December 2022.⁸

The staff remains particularly focused on measures that it perceives to be misleading to investors, including non-GAAP measures that:

- ▶ Exclude normal, recurring cash operating expenses
- ▶ Incorporate individually tailored accounting principles
- ▶ Are not clearly labeled or accompanied by an explanation of why the non-GAAP measure is useful to investors
- ▶ Are more prominently disclosed than the related GAAP measure

The C&DIs reinforce the staff's view that extensive, detailed disclosures cannot cure misleading disclosures.

We encourage registrants to evaluate their non-GAAP measures for compliance with the C&DIs, Regulation G, and Item 10(e) of Regulation S-K, including the following specific areas.

Normal, Recurring Cash Operating Expenses

Some registrants have historically struggled with how to interpret what is considered a “normal, recurring” cash operating expense that is an inappropriate adjustment in a non-GAAP performance measure. C&DI 100.01 includes factors that the staff considers when evaluating an adjustment (for example, the registrant's operations, strategy, industry, regulatory environment) and clarifies that “occasional” expenses that occur irregularly may be considered recurring expenses. For example:

- ▶ Acquisition-related costs may be considered recurring for a highly acquisitive registrant
- ▶ Preopening or start-up costs that are customary in retail, restaurant, and other industries.

Individually Tailored Accounting Principles

The staff objects to non-GAAP financial measures that contain “individually tailored accounting principles,” a concept that applies broadly to revenue and expenses.

Examples of individually tailored accounting principles include:

- ▶ Adjusting revenue to recognize it as it is billed, instead of over time in accordance with GAAP
- ▶ Presenting revenue on a net basis when gross presentation is required by GAAP or vice versa
- ▶ Changing the basis of accounting for revenue or expenses from accrual to cash basis
- ▶ Consolidating the results of an entity that does not qualify for consolidation, or excluding an entity that does qualify for consolidation
- ▶ Adjusting for parts, but not all, of an accounting concept, such as excluding amortization of certain, but not all, intangibles

⁸ Refer to [BDO's Bulletin: SEC Updates Compliance and Disclosure Interpretations on Non-GAAP Financial Measures](#).

Labeling

The staff frequently comments on non-GAAP measures and adjustments that are not described as “non-GAAP” or are labeled with potentially misleading titles. Inappropriate labels are considered violations of Regulation G.

C&DI 100.05 includes characteristics of labels that may be considered misleading, including:

- ▶ Failing to identify and describe the measure as non-GAAP
- ▶ Labeling the non-GAAP measure the same as the related GAAP measure, even though it is calculated differently (for example, referring to a non-GAAP measure as “gross profit” even though it excludes components of expenses included in GAAP gross profit)
- ▶ Referring to the non-GAAP measure as “pro forma” when it is not calculated in a manner consistent with Article 11 of Regulation S-X

Prominence

Registrants must present GAAP measures before any related non-GAAP measures in SEC filings and earnings releases, whether in the form of dollar amounts, ratios, or percentages (or in charts, tables, or graphs).

In addition, a registrant must:

- ▶ Begin non-GAAP reconciliations with the GAAP measure and reconcile to the non-GAAP measure
- ▶ Discuss the GAAP measures before non-GAAP measures
- ▶ Not use formatting, such as bold, underlines or larger font, in such a way as to give undue prominence to a non-GAAP measure
- ▶ Not present a non-GAAP income statement (that is, an income statement that includes most of the line items and subtotals from the GAAP income statement)

Other Non-GAAP Comments

Other non-GAAP comments from the staff focus on:

- ▶ Inconsistent adjustments between periods, such as adjusting for an item in a prior period, but not in the current period, or vice versa
- ▶ “Cherry-picking” non-GAAP adjustments, such as adjusting for expenses or losses, but not for similar income or gains
- ▶ Inconsistencies between non-GAAP financial measures presented in the registrant’s earnings releases, SEC filings, investor presentations, and website
- ▶ The adequacy of disclosures explaining why management believes the non-GAAP presentation gives useful information to investors

BDO INSIGHTS — NON-GAAP MEASURES

We expect that non-GAAP measures will remain at the top of the staff’s radar in the future. While the staff often allows registrants to correct for an objection to a particular non-GAAP adjustment or measure in their next filing (vs. filing an amendment), the staff may refer egregious non-GAAP adjustments or presentations to the SEC’s Division of Enforcement (“SEC Enforcement”). In 2023, SEC Enforcement took several actions against registrants for presenting misleading non-GAAP measures and failing to maintain adequate disclosure controls and procedures over their presentation. These registrants faced significant monetary penalties, civil fines, and cease and desist orders. With continued staff scrutiny of non-GAAP measures through the comment letter process, we expect continued SEC Enforcement scrutiny of registrants that do not comply with Regulation G, Item 10(e) of Regulation S-K and the related non-GAAP C&DIs.

SELECT STAFF COMMENT LETTER TOPICS

The staff must review registrant filings at least once every three years, though it is not uncommon for the staff to review a registrant more frequently. When selecting disclosures for review, the staff considers events such as significant volatility in the stock price of the registrant as compared to its peers, restatements, and other factors.⁹ The staff may review specific disclosures, the financial statements and related disclosures in MD&A, or the entire document.

In addition to focusing on [non-GAAP financial measures](#) and [climate change disclosures](#), as discussed earlier, staff comment letters in 2023 focused on the following topics:

- ▶ [MD&A](#)
- ▶ [Segment reporting](#)
- ▶ [Revenue recognition](#)
- ▶ [Business combinations](#)

Management Discussion and Analysis

The objective of MD&A is to disclose material information that enables a reader to assess a registrant's financial condition and results of operations. Staff comment letters often request additional disclosure when a registrant describes material events that affect current or future operations in a vague or inconsistent manner. Recent comment letters have focused on the effect of [macroeconomic conditions](#) (discussed above) on the registrant's operations.

TOPIC	COMMENT LETTER OBSERVATIONS
Results of operations and liquidity	▶ Material changes to the operations are disclosed in an imprecise manner. Staff comments ask the registrant to quantify material changes that offset one another or disclose the underlying reason for the material change. ▶ The analysis of the change in operating cash flows recites noncash or working capital items disclosed in the cash flow statement. Staff comments ask the registrant to disclose the drivers of cash flows and the underlying reason for material changes. ▶ Known trends or uncertainties that have affected or are reasonably likely to affect the registrant's operations are not disclosed. Staff comments ask the registrant to expand its discussion to address whether: • Events, such as supply chain disruptions, inflation, or other macroeconomic factors have affected its current operations; or • Such events are reasonably likely to affect its future operations
Key Performance Indicators (KPIs)	▶ A KPI discussed on earnings calls or presented in investor presentations is not disclosed in MD&A. The staff may ask why disclosure of the KPI is not necessary for a reader to understand the business of the registrant. ▶ A KPI presented in MD&A is not accompanied by disclosure of its definition, how it is calculated, the reason it is useful to investors, or how management uses the KPI to manage or monitor business performance. The staff refers registrants to its previously issued guidance on the disclosure of KPIs and metrics in MD&A.

⁹ Section 408 of the Sarbanes-Oxley Act requires the review of disclosures made by registrants that report under the Securities Exchange Act of 1934. Section 408 also details criteria the staff considers when selecting reviews.

Critical accounting estimates

- ▶ The disclosures repeat or refer to the accounting policies in the financial statements. Staff comments ask the registrant to include additional quantitative and qualitative disclosure on the elements of the estimate that require significant judgment, and the sensitivity of reported amounts to changes in assumptions underlying the estimate.
- ▶ Goodwill impairment indicators, such as a decline in stock price, margin, or results of operations, are present but disclosures do not address whether any reporting units are at risk of impairment. Staff comments ask the registrant to provide the results of its goodwill impairment analysis; and the staff comments often focus on the guidance in Section 9510 of the Division of Corporation Finance's ("Corp Fin's") Financial Reporting Manual (FRM).

Segment Reporting

Segment disclosures give a meaningful view of the company through the eyes of management and often drive the discussion in MD&A. Staff comments often focus on the consistency of segment disclosures with information presented outside of the financial statements, such as on earnings calls and in investor presentations.

TOPIC	COMMENT LETTER OBSERVATIONS
Identification of operating segments	▶ Discrete financial information discussed or presented on earnings calls or in investor presentations does not align with the segment disclosures in the financial statements. Staff comments ask the registrant to clarify: • The role of the Chief Operating Decision Maker (CODM) • The CODM's direct reports, how often the CODM meets with direct reports, and how the direct reports are compensated • Detail on the budgeting process, including who approves the budget and the CODM's involvement in each step of the process • The financial information the CODM receives to assess performance and allocate resources ▶ A change in key management, a significant acquisition or disposition (or another significant event) has occurred, but the registrant's reportable segments did not change. The staff may ask the registrant for its analysis of how it determined its reportable segments after such an event.
Aggregation of operating segments	▶ Two or more operating segments are aggregated into a single reportable segment, but it is unclear whether the long-term performance and economic characteristics are similar. The staff may ask the registrant to provide its analysis of the aggregation criteria in Accounting Standards Codification (ASC) Topic 280, including detail on the similarity of long-term sales and margin trends for each operating segment.
Performance measure used by CODM	▶ The performance measure used by the CODM is not consistent with performance measures discussed elsewhere in the document, or in earnings calls or investor presentations. Staff comments may seek further clarity about the measure the CODM uses to make decisions and allocate resources.

TOPIC	COMMENT LETTER OBSERVATIONS
	• When the CODM uses more than one measure in evaluating segment performance, the performance measure disclosed is the one that is most consistent with the amounts measured and reported in the financial statements. For example, if the CODM measures segment performance based on segment gross profit and segment adjusted Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA), only segment gross profit is disclosed in the financial statements. • Presentation of a consolidated non-GAAP figure in the financial statements is prohibited.¹⁰ For example, if the CODM uses EBITDA to measure segment performance, the registrant may not present consolidated EBITDA in the reconciliation to pre-tax income. However, the registrant can present a consolidated total outside of the financial statements, but it must be labeled non-GAAP and follow the rules and regulations applicable to non-GAAP measures.
Entity-wide disclosures	▶ Information about major customers is not disclosed. If revenues from a single customer are 10% or more of the registrant's revenues, the staff will request disclosure of the revenue from each customer, as well as the segment in which the revenue is reported. ▶ The basis for the entity-wide disclosures related to products and services, revenues attributable to individual foreign countries, and revenues from major customers does not align with other information in the filing. The staff will seek clarity from the registrant about these inconsistencies. ▶ Segment revenues are presented on a non-GAAP basis. The staff will object to such presentation, because the entity-wide revenue disclosures under ASC 280 must be presented on the same basis as "the financial information used to produce the public entity's general-purpose financial statements."

Revenue Recognition

The disclosure requirements in ASC Topic 606, *Revenue from Contracts with Customers*, are intended to provide users of the financial statements with an understanding of the cash flows and uncertainty associated with such contracts. Staff comments often seek qualitative and quantitative information on the amount, timing, and pattern of revenue recognition.

TOPIC	COMMENT LETTER OBSERVATIONS
Presentation and Disclosure	▶ Revenue is presented on a gross or net basis, but it is unclear whether the registrant is the principal or agent. The staff may ask for the registrant's analysis to support its presentation. ▶ Revenue presented outside of the financial statements (for example, in MD&A, earnings calls, investor presentations, or other publicly available information) is disaggregated differently than the disclosure in financial statements. Staff comments may seek ask how the categories presented in the financial statements best reflect

¹⁰ Item 10(e)(1)(ii)(c) of Regulation S-K states that "A registrant must not...Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes."

TOPIC	COMMENT LETTER OBSERVATIONS
	how economic factors affect the nature, amount, timing, and uncertainty of revenue and cash flows.
Nature, timing, and amount	► The nature, amount, and timing of revenue recognition is unclear. Staff comments often ask the registrant to clarify: • The identification of performance obligations - that is, how the registrant determined whether certain promised goods or services are separately identifiable. • The type and nature of variable consideration, including whether any variable consideration is constrained. • The method used to recognize revenue for performance obligations (for example, over-time or point-in-time) and why the method is appropriate.

For additional guidance on revenue recognition disclosures, refer to [BDO's Blueprint: Revenue Recognition Under ASC 606](#).

Business Combinations

Business combination disclosures required under U.S. GAAP and financial information required under Rule 3-05 and Article 11 of Regulation S-X give investors information to assess the nature and effect of a registrant's acquired businesses. Staff comments often focus on acquired businesses that appear significant but lack the required information under U.S. GAAP or Regulation S-X.

TOPIC	COMMENT LETTER OBSERVATIONS
Revenue and earnings	► The revenue and earnings of the acquiree after the acquisition or supplemental pro forma financial information are not disclosed in the financial statements. The staff may challenge the assertion that disclosure of such information is immaterial if the acquisition appears to be material to the registrant's balance sheet.
Regulation S-X	► Form 8-K discloses a significant acquisition but financial statements of the acquiree and related pro forma financial information are not filed. The staff may ask for the analysis performed by the registrant to assess compliance with Rule 3-05 and Article 11 of Regulation S-X.

BDO INSIGHT – COMMENT LETTERS WILL LIKELY INCREASE

We expect an increase in volume of comment letters due to the macroeconomic environment, rulemaking activity, and emerging trends. We anticipate comment letters will focus on some of the new disclosure requirements related to newly effective rules like the disclosure rules related to pay vs. performance, insider trading, share repurchases, clawback of erroneously awarded compensation, and cybersecurity, among others.

COMMISSION AND STAFF ACTIVITIES

FINAL RULES

Share Repurchase Disclosures



SEC REFERENCE

Final Rule: [Share Repurchase Disclosure Modernization](#)

Regulation S-K, Item 408(d)

In May 2023, the SEC adopted amendments to modernize the share repurchase disclosure requirements. Issuers may repurchase shares of stock through various means, including open market purchases, tender offers, privately negotiated transactions, and accelerated share repurchases. Typically, repurchase plans or programs are disclosed when the share repurchases are authorized by the board of directors. Before the amendments, monthly repurchase data was reported in an issuer's periodic reports. The amendments require registrants to report **daily** repurchase activity quarterly or semi-annually, and to make other qualitative disclosures about their repurchase plans. These disclosures were required for the first quarter that began on or after October 1, 2023.

New Disclosure Requirements

Registrants must disclose the aggregate daily repurchase activity quarterly or semi-annually. Registrants that file on domestic forms will file the required information quarterly in an exhibit to Forms 10-K (for the fourth fiscal quarter) and 10-Q. Foreign private issuers not using domestic forms will report on new Form F-SR, which is due within 45 days after the end of each fiscal quarter. Listed closed-end funds will include the data in annual and semi-annual reports on Form N-CSR.

The tabular disclosures must include the following for each day:

- ▶ Class of shares
- ▶ Average price paid per share
- ▶ Total number of shares purchased (including the total purchased as part of any publicly announced plans)
- ▶ Aggregate maximum number of shares (or approximate dollar value) that may yet be repurchased
- ▶ Total number of shares purchased on the open market
- ▶ Total number of shares purchased that are intended to qualify for the safe harbor in Rule 10b-18
- ▶ Total number of shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c)

If certain officers or directors purchase or sell shares subject to a registrant's share repurchase plan or program within four business days before or after the announcement of such plan, the registrant must check a box preceding the tabular disclosures described above.

The amendments require the following narrative disclosures of repurchases:

- ▶ The objective or rationale for share repurchases and the process or criteria used to determine the amount of repurchases
- ▶ Policies and procedures relating to purchases and sales of the issuer's securities during a repurchase program by officers and directors (including any restrictions on such transactions)

Additionally, new Item 408(d) of Regulation S-K requires quarterly disclosure of a registrant's adoption and termination of Rule 10b5-1 programs in Forms 10-K and 10-Q. The SEC eliminated the previous requirement to disclose monthly repurchase data in periodic reports.

Effective Dates

All issuers other than FPIs and listed closed-end funds must comply on Forms 10-K (for the fourth fiscal quarter) and 10-Q beginning with the first filing that covers the first full fiscal quarter that begins on or after October 1, 2023.

FPIs that file on foreign forms must comply in the new Form F-SR that covers the first full fiscal quarter beginning on or after April 1, 2024. Form 20-F narrative disclosure that relates to the Form F-SR filings is required starting in the first Form 20-F filed after the first Form F-SR is filed.

Listed closed-end funds must comply beginning with the Form N-CSR covering the first fiscal period that begins on or after January 1, 2024.

STAFF GUIDANCE

Staff Sample Comment Letters

China-Specific Disclosures

In recent years, the SEC has been particularly focused on disclosures related to the legal, operational, and other risks associated with registrants based in, or with a majority of operations in, the Peoples Republic of China (PRC) ("China-based issuers"). As part of the SEC's ongoing monitoring of China-based issuers under the Holding Foreign Companies Accountable Act (HFCAA), the staff indicated that issuers should provide more prominent and specific disclosures tailored to their individual facts and circumstances.

The staff's observations and comments on these matters in its [sample letter](#) are as follows:

TOPIC	COMMENT LETTER FOCUS
HFCAA disclosure obligations	▶ Item 9C of Form 10-K and Item 16I of Form 20-F require certain disclosures from "Commission-Identified Issuers."¹¹ The staff's comments focus on whether the registrant included all required elements of disclosure under these items and seek additional information about the basis for the disclosures, including any materials, legal opinions, or third-party certifications relied upon in connection with disclosures about: • The registrant's ownership by government entities in the foreign jurisdiction • The identification of Chinese Communist Party officials on the board of directors • Whether the articles of incorporation contain wording from a charter of the Chinese Communist Party
Material risks related to the PRC government	▶ Registrants must evaluate and disclose any material risks to or effects on their businesses due to the PRC government's role in their business operations, including any intervention or control by the PRC.

¹¹ A Commission-Identified Issuer is an issuer that has retained an auditor in a foreign jurisdiction that the PCAOB is not able to fully inspect or investigate due to positions taken by the regulatory authority in that foreign jurisdiction. Until recently, China was one of these jurisdictions.

TOPIC	COMMENT LETTER FOCUS
Uyghur Forced Labor Prevention Act (UFLPA)	▶ The UFLPA prohibits the import of goods from the PRC's Xinjiang Uyghur Autonomous Region. Registrants must evaluate and disclose the material impacts of the UFLPA (for example, material compliance risks, supply chain disruptions, or reliance on parties that conduct their business in the region) within MD&A.

Crypto Asset Market Developments

The staff's [sample letter](#) on crypto asset market developments describes potential comments to registrants about the direct or indirect impact that recent events in the crypto asset market may have on their businesses. Registrants should provide specific, tailored disclosures about market events and conditions, how the events and conditions affect their operations, and how the events and conditions could affect investors.

While not an exhaustive list, such disclosures may include information about:

- ▶ Significant crypto asset market developments material to understanding or assessing the registrant's business, financial condition, and results of operations
- ▶ How recent bankruptcies in the crypto asset market have affected or may affect the registrant's business, directly or indirectly
- ▶ Direct or indirect exposure to others in the crypto asset market that filed for bankruptcy or experienced excessive redemptions
- ▶ The occurrence of excessive redemptions or, if material, the risk of excessive redemptions
- ▶ Policies and procedures for safeguarding crypto assets
- ▶ Material crypto assets that serve as collateral for any loan or margin
- ▶ Material risks related to reputational harm, loss of customers, financing or liquidity risks, disruptions in the crypto asset markets, and regulatory developments

Registrants should consider the need for additional disclosures in the business description, risk factors, and MD&A sections of their SEC filings (including registration statements, prospectus supplements, and periodic filings).

XBRL Disclosures

eXtensible Business Reporting Language (XBRL) allows financial and other information to be machine-readable and is intended to help investors consume and compare registrants' information. The staff urges registrants to consider the following [sample comments](#) as they prepare their XBRL and Inline XBRL disclosures in upcoming filings.

TOPIC	COMMENT LETTER FOCUS
Interactive Data File Submissions	▶ The staff will ask for an amendment to the filing if the registrant did not include the required Inline XBRL presentation.
Cover Page	▶ The tagged value of the common shares outstanding reported on the cover page of a filing and in the balance sheet must be presented using the same scale (for example, if the value is presented in thousands in the balance sheet, it must be presented in thousands on the cover page).

TOPIC	COMMENT LETTER FOCUS
Pay versus Performance (PVP)	▶ Inline XBRL must be used for PVP disclosures required by Item 402(v) of Regulation S-K. Even if the registrant combines elements of the disclosures in a table or graph, it must tag each required Item 402(v) data point.
Financial Statements	▶ The staff may question and request the rationale for using different XBRL elements to tag the same line item in the financial statements from period to period. ▶ Custom tags are used only when an appropriate tag does not exist in the standard taxonomy. The staff may question why the registrant did not use U.S. GAAP tags for line items on the face of the financial statements.

Compliance and Disclosure Interpretations

The staff issued many C&DIs throughout 2023 to help registrants with their application of several new SEC rules.

Insider Trading Disclosures



SEC REFERENCE

Final Rule: [Insider Trading Arrangements and Related Disclosures](#)

Exchange Act Rule [Compliance and Disclosure Interpretations](#) Nos. 120.26 through .28

Regulation S-K, Items 408(a), 408(b), and 402(x)

Item 16J of Form 20-F

The SEC amended its insider trading rules in 2022¹² to include mandatory cooling-off periods, limitations on overlapping plans, director and officer certifications, a requirement to act in good faith, and enhanced disclosures. The staff issued several C&DIs in 2023 that offer valuable interpretive guidance about the effective dates and other aspects of the rules.

Effective Dates

The effective dates of the quarterly and annual insider trading disclosures are as follows:

- ▶ Entities other than SRCs must comply in the first filing that covers the first full fiscal period that begins on or after April 1, 2023.
- ▶ SRCs must comply in the first filing that covers the first full fiscal period that begins on or after October 1, 2023.

The following table illustrates the effective dates in Forms 10-K, 10-Q, and 20-F for registrants with December 31 or June 30 fiscal year ends:

¹² Further information about the amendments can be found in [BDO's Bulletin: SEC Adopts Amendments to Rule 10b5-1 Insider Trading Plans](#).

	DECEMBER 31		JUNE 30	
	NON-SRC	SRC	NON-SRC	SRC
S-K 408(a) — Quarterly disclosures	Form 10-Q for the quarter ended 6/30/23	Form 10-K for the fiscal year ended 12/31/23	Form 10-K for the fiscal year ended 6/30/23	Form 10-Q for the quarter ended 12/31/23
S-K 402(x) and 408(b)¹³ — Annual disclosures	Forms 10-K or 20-F for the year ended 12/31/24	Forms 10-K or 20-F for the year ended 12/31/24	Forms 10-K or 20-F for the fiscal year ended 6/30/24	Forms 10-K or 20-F for the fiscal year ended 6/30/25

Accordingly, the quarterly disclosures are required in Form 10-K for the year ending December 31, 2023, for all registrants.

The quarterly disclosures require registrants to:

- ▶ Disclose information about any adopted or terminated contract, instruction or written plan for the purchase or sale of securities intended to satisfy the affirmative defense conditions of Rule 10b5-1(c), as well as any “non-rule 10b5-1 trading arrangement” as defined by Item 408(c) of Regulation S-K
- ▶ Describe the material terms, such as the following, if the contract is intended to satisfy the affirmative defense of Rule 10b5-1(c):
 - Name and title of director or officer
 - Date the director or officer adopted or terminated the trading arrangement
 - Duration of the trading arrangement
 - Aggregate number of securities purchased or sold pursuant to the trading arrangement

Other Insider Trading C&DIs

TOPIC	GUIDANCE
Regulation S-K, Item 408(a) - Insider Trading Arrangements and Policies (Questions 133A.01 and 133A.02)	▶ The requirement to disclose: • The termination of an insider trading plan does not apply to plans that were terminated due to their expiration or completion. • Whether any director or officer adopted or terminated a Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement applies to trading arrangements covering securities for which the director or officer has a direct or indirect pecuniary interest.
Exchange Act Section 16 and Related Rules and Forms, Form 4 (Question 135.04)	▶ The checkbox on Form 4 to identify any Rule 10b5-1 trading plan transactions does not apply to trading plans that were adopted before April 3, 2023, the effective date of the new checkbox.

¹³ Item 16J of Form 20-F outlines the analogous disclosure requirements for foreign private issuers.

TOPIC	GUIDANCE
Exchange Act Rules, Manipulative and Deceptive Devices and Contrivances: Rule 10b5-1 (Questions 120.29, 120.30, and 120.31)	▶ Directors and officers are currently subject to a mandatory cooling off period that is the later of 90 days after the plan's adoption, or two business days after the filing of the Form 10-Q or Form 10-K for the fiscal quarter when the plan was adopted. The day that Form 10-Q or Form 10-K is filed (whether before or after trading opens) does not count as a business day. For example, if Form 10-K is filed on Monday, the cooling off period applies to Tuesday and Wednesday. ▶ The rules contain limits on the use of multiple overlapping insider trading plans. An open-market transaction conducted at the direction of a 401(k) plan administrator to match a contribution by the participant with employer stock is not an overlapping plan for the purpose of complying with Rule 10b5-1.

Pay versus Performance

In 2022, the SEC adopted amendments mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act that require a registrant to disclose the relationship between executive compensation actually paid and financial performance of the registrant (the Pay Versus Performance (PVP) disclosures). In 2023, the staff issued many C&DIs to help registrants with the computation and presentation of amounts reported in the PVP disclosures. BDO's publication, [Pay versus Performance Disclosures: A Snapshot](#), summarizes the PVP disclosure requirements and the staff's guidance in the 2023 C&DIs.

Financial Reporting Manual

Corp Fin published an update to the [FRM](#)¹⁴ in January 2023.¹⁵ The updates include a new phone number for contacting Corp Fin's Office of the Chief Accountant to discuss questions about financial statement waiver requests pursuant to Rule 3-13 of Regulation S-X and a link to the new online [submission form](#) for the requests. The updates do not include conforming changes for the S-X Rule 3-05 or Article 11 amendments that became effective in 2021. Accordingly, portions related to the reporting for significant acquisitions and pro forma financial statements are outdated.

Staff Announcement about Government Shutdowns

Corp Fin announced its plan of action in advance of and during a government shutdown. The announcement clarifies staff operations and registrant actions that may be taken before or during a government shutdown.

TOPIC	SUMMARY
Accelerating requests	▶ The staff is unable to consider a request for acceleration of the effective date of a pending registration statement during its closure. Therefore, a registrant contemplating such a request before a shutdown should reach out to the staff to resolve outstanding issues. Requests for acceleration may be considered on the day of submission.

¹⁴ The FRM is an internal SEC Staff reference document that includes s general guidance on several SEC reporting topics. While the FRM is not authoritative, it is often a helpful source of guidance for evaluating SEC reporting issues.

¹⁵ The inside cover lists a summary of the paragraphs updated.

TOPIC	SUMMARY
	▶ The staff will consider granting an acceleration request for a pending registration statement (or a qualification request as it relates to Form 1-A) before receiving the “no objections” statement from Financial Industry Regulatory Authority (FINRA) if the underwriter confirms it will not execute the underwriting agreement or confirm sales of the securities offered before obtaining such statement. In this scenario, a registrant should inform FINRA of its plan as soon as possible.
Delaying amendments	▶ A registrant may: • File a new registration statement without the delaying amendment language before or during a shutdown. • Amend a registration statement during a shutdown to remove the delaying amendment language. ▶ A registrant should consider the risks associated with excluding or removing such language. If the government remains open or reopens before effectiveness, the staff may ask the registrant to include the language in an amended filing and will consider requests for acceleration if the registrant does so.
Updating information for offering	▶ If a registrant already has an effective registration statement (or qualified Form 1-A) and determines it must update the information in its prospectus or offering statement, then it must do so before commencing or continuing its offering. The staff is unable to qualify or declare a post-effective amendment effective during a shutdown.
Communicating with the staff	▶ During a shutdown, the staff: • May consider requests pursuant to Rule 3-13 of Regulation S-X for emergency relief involving the protection of property. • Will not review or respond to: – Rule 14-a materials – Requests for written or oral guidance on legal interpretations
Other	▶ “Business days” (that is, any day other than a federal holiday, Saturday, or Sunday) for rules that require day counting remain unchanged during a government shutdown. ▶ During a shutdown: • New registration statements may be filed • A registrant may proceed with a shelf takedown ▶ An offering pursuant to an effective registration statement that does not price within 15 days is effective, even during a shutdown, upon

TOPIC	SUMMARY
	filing a post-effective amendment pursuant to Rule 462(c). A registrant may not rely on Rule 462(c) if there are substantive changes to the prospectus in the effective registration statement. ► The staff is not required to review a preliminary proxy or information statement prior to the registrant filing the definitive materials. The staff may review the proxy or information statement when it resumes operations.

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