



July 27, 2023

SEC Adopts New Rules on Cybersecurity Risk Management and Disclosure

On July 26, 2023, the Securities and Exchange Commission ("SEC"), the U.S. securities regulator, adopted new final rules on cybersecurity management, governance and incident disclosure reporting by public companies. The new rules, which affect all public reporting companies ("Registrants"), can be found [Here](#).

The new rules:

- Introduce new Item 1.05 to Form 8-K to require reporting of any cybersecurity incident the Registrant deems material, including nature, timing and scope of the incident, as well as impact or likely impact, generally within 4 days of the Registrant's determination of the incident's materiality, which must be done without unreasonable delay. Reporting obligations may be delayed or, ultimately, exempted, if the U.S. Attorney General determines and notifies the SEC that immediate disclosure would threaten national security or public safety.
- Introduce new Item 106 to Regulation S-K to require Registrants to disclose their processes, if any, for assessing, identifying and managing material risks from cybersecurity threats or prior incidents. Item 106 also requires disclosure of Registrant's board of directors oversight and management's role and expertise. Reg. S-K, which parallels Reg. S-X for financial statement reporting, sets forth the non-financial information that must be furnished in both 1934 Exchange Act periodic reports like Form 10-K, 10-Q and 8-K, proxy statements and tender offers and 1933 Securities Act registration statements like Form S-1, used for IPOs.

- Amend Form 6-K to require foreign private issuers to report material cybersecurity incidents that they make public or are required to make public in any other jurisdiction. Form 20-F will be amended to require foreign private issuers to make periodic cybersecurity threat disclosures comparable to those of new Reg. S-K, Item 106.

The final rules become effective 30 days following publication in the Federal Register. New Item 106, Reg. S-K compliance is required of all Registrants beginning with fiscal years ending on or after December 15, 2023. New Item 1.05, Form 8-K and amended Form 6-K compliance is required of all Registrants other than smaller reporting companies on the later of 90 days after Federal Register publication or December 18, 2023. Smaller reporting companies are granted an additional 180 days and must comply with Item 1.05 on the later of 270 days from the rules' effective date or June 15, 2024. The disclosures must be made in Inline eXtensible Business Reporting Language, or XBRL, beginning one year after initial compliance.

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