2024 International Capital Markets Outlook

January 3, 2024

As capital markets continue to be challenged by difficult market conditions, 2024 could mark a crucial year towards the recovery of both debt and equity markets globally. Against this backdrop, investors and issuers will need to consider a number of important legal issues in the United States and the United Kingdom that are likely to inform compliance procedures and transaction execution. In this Debevoise In Depth, we provide an outlook on the key regulatory developments anticipated to impact international capital markets in the coming year, with a focus on those impacting the U.S. market for foreign private issuers[1] ("FPIs") and the capital markets in the United Kingdom.

U.S. Developments

Compensation Clawback Policies

10b5-1 Trading Plans

Cybersecurity Disclosure Rules

Disclosure Guidance

Crypto Assets

AI

China-Based Companies

Sanctions

Nasdaq Board Diversity

Public Reporting for Issuers of Rule 144A Bonds

Share Repurchase Disclosures

Beneficial Ownership Reporting

Filing Mechanics

Proxy Advisor Updates

UK Developments

Listing Reform Update

Market Abuse Regulation

Proxy Advisor Updates

Transitional Period to UK GAAP or IAS

Stamp Duties on Capital-Raising in Relation to Securities of UK Companies

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[1] For U.S. securities law purposes, a "foreign private issuer" is an issuer that has 50% or less of its outstanding voting securities held directly or indirectly by U.S. residents; or if more than 50% of its outstanding voting securities are held directly or indirectly by U.S. residents, (i) less than a majority of its executive officers or directors are U.S. citizens or residents, (ii) 50% or less of the issuer's assets are located in the United States and (iii) the issuer's business is administered principally outside of the United States.

U.S. Developments

Compensation Clawback Policies

On January 27, 2023, final rules on clawbacks of executive compensation required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 became effective.[2] Companies listed in the United States had until December 1, 2023 to adopt a clawback policy that complies with Rule 10D-1 under the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the listing standards of the relevant stock exchange. FPIs must now file their clawback policies as an exhibit to their annual reports on Form 20-F. There are also two checkbox disclosures on the cover of Form 20-F indicating (i) whether any financial statements included in the filing reflect the correction of an error to previously issued financial statements and (ii) if any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the issuer's executive officers. If an FPI is required to prepare an accounting restatement that triggered recovery of erroneously awarded incentive-based compensation under its clawback policy, it must provide disclosure under a new Item 6-F of Form 20-F.

To the extent they have not already, FPIs should evaluate their compensation programs to determine whether any elements are "incentive-based compensation" within the meaning of the clawback policy and ensure that the clawback provisions in their compensation programs are consistent with (and refer explicitly to) the adopted clawback policy. FPIs may also contemplate changes to their compensation programs to move some incentive compensation out of the remit of clawback policies, such as using time-vesting awards or discretionary bonuses, or incorporating strategic or operational measures, which are not considered "financial reporting measures" under these policies and related rules; however, FPIs should exercise caution, as such changes may impact the alignment with shareholder interests and the principles of pay for performance.[3]

10b5-1 Trading Plans

On February 27, 2023, amendments to Rule 10b5-1 under the Exchange Act became effective.[4] The amendments added a number of new conditions to the availability of the affirmative defense to insider trading liability and transactions in securities pursuant to trading arrangements that satisfy the requirements of Rule 10b5-1(c)(1), including mandatory cooling-off periods between entry into or amendments of plans and transactions. The amendments also preclude overlapping plans, with certain exceptions, and more than one single trade plan in any 12-month period. In addition, an FPI is now

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[2] Refer to the Debevoise In Depth dated October 28, 2022 (accessible here).

[3] For more tips and insights, refer to the Debevoise Update dated December 8, 2023 (accessible here).

[4] Refer to the Debevoise Update dated December 16, 2022 (accessible here).

required to disclose in its annual report on Form 20-F (beginning with the annual report on Form 20-F covering the first full fiscal period that begins on or after April 1, 2023) its policies and procedures governing the purchase, sale and other dispositions of the FPI's securities by its directors, officers and employees, and the FPI itself, that are reasonably designed to promote compliance with insider trading laws, rules and regulations and any applicable listing standards (or, if no such policies exist, the FPI is required to explain why it does not have such policies). FPIs are also now required to file a copy of their insider trading policies and procedures as an exhibit to Form 20-F.

In addition, on August 25, 2023, the staff of the Division of Corporation Finance ("CorpFin") of the U.S. Securities and Exchange Commission (the "SEC") released guidance regarding amended Rule 10b5-1 and related reporting requirements, which, among other things, clarified that directors and Section 16 officers[5] are subject to a cooling-off period before the date on which trading under a plan may commence, extending to the later of: (i) 90 days after the adoption or modification of a Rule 10b5-1 trading plan; and (ii) two business days following the disclosure of the issuer's financial results in a Form 10-Q or Form 10-K (or Form 20-F or Form 6-K for FPIs) for the fiscal quarter in which the plan was adopted or modified (but not to exceed 120 days following adoption or modification of the plan).

Cybersecurity Disclosure Rules

On September 5, 2023, the long-awaited SEC final rules on cybersecurity risk management, strategy, governance and incident disclosure for issuers became effective.[6] The new rules are part of the SEC's larger efforts focused on cybersecurity regulation, with a growing universe of rules aimed at different types of SEC registrants, including FPIs. The rules introduce three new types of disclosure requirements relating to material cybersecurity incidents, cybersecurity risk management processes and cybersecurity management and governance.

The rules amend Form 6-K to require FPIs to disclose on Form 6-K material cybersecurity incidents that they disclose or otherwise publicize in a foreign jurisdiction, to any stock exchange or to security holders, promptly after the information contained in the report is made public. The new Form 6-K reporting obligations became effective on December 18, 2023. FPIs are also now required to make several disclosures related to cybersecurity risk management programs in their Forms 20-F, including whether and

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5 Rule 16a-1 under the Exchange Act defines the term "officer" as an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer.

6 Refer to the Debevoise Update dated July 27, 2023 (accessible here).

how they assess, identify and manage material risks, whether they engage any third parties, auditors or consultants in such processes and whether they have processes in place to oversee and identify third-party risk, which represents a more streamlined disclosure requirement when compared to the rules as proposed. In addition, FPIs are required to describe the board's oversight of and management's role in assessing and managing risks posed by cybersecurity threats in their Forms 20-F. With respect to management's role, FPIs must address, to the extent applicable, which management positions or subcommittees are responsible for assessing and managing such risks, including the relevant expertise of such persons, the process by which management or their committees are informed about and monitor the prevention, detection, mitigation and remediation of cybersecurity incidents, and whether such person or committees report information about such risks to the board or a subcommittee of the board. FPIs are also required to disclose whether members of management have prior work experience, education, knowledge, skills or other background in cybersecurity, to the extent they are involved in cybersecurity risk management. FPIs must provide the new Form 20-F disclosures beginning with annual reports for fiscal years ending on or after December 15, 2023.

Disclosure Guidance

Crypto Assets

In light of significant recent events that have transpired in the digital asset market, issuers should continue to focus on disclosure of exposure to any crypto asset risks that may be material to an understanding or assessment of their business, financial condition and results of operations. As set out in CorpFin's sample comment letter,[7] issuers are advised to update their "Description of Business," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Risk Factors" disclosures with certain topics (each if, and to the extent, material) including the impact or potential impact of recent crypto market-related bankruptcies and the downstream effects of those bankruptcies on the issuer's business, financial condition, customers and counterparties, either directly or indirectly, and measures the issuer has undertaken to safeguard customers' crypto assets, and any policies and procedures that are in place to prevent self-dealing and other potential conflicts of interest or regarding the commingling of assets (including any material changes to such procedures).

AI

As 2023 marked the widespread application of artificial intelligence ("AI") across industries, both investors and the SEC focused on the extent to which issuers relied on this emerging technology. In July 2023, the Chair of the SEC identified key potential risks for future consideration by the SEC, including data privacy, deception, bias and intellectual property. While the only rules proposed by the SEC in 2023 in relation to AI

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[7] Refer to the Debevoise Update dated December 13, 2022 (accessible here).

were targeted at broker-dealers' and investment advisers' potential conflicts of interests, the Chair's speech highlighted the need to carefully consider disclosures of AI opportunities and risks by public companies to avoid misleading investors. While it remains to be seen whether the SEC develops any rules or model comment letters with respect to AI, issuers should nonetheless consider proactively addressing the risks identified in the SEC Chair's speech in their future reporting in light of the rapidly evolving technological landscape, including by assessing the impact of AI on the development of products and services and their overall business processes and potential risks regarding technical implementation, cybersecurity, ownership of data and regulation of AI in jurisdictions where the issuer operates.

China-Based Companies

On July 17, 2023, CorpFin released a sample comment letter regarding disclosures by companies based in or with a majority of their operations in the People's Republic of China ("China-Based Companies"). The accompanying press release reiterated the SEC's ongoing monitoring of China-Based Companies' disclosures and issuances of related individual comment letters, and emphasized the necessity of "more prominent, specific, and tailored disclosures" about China-specific matters.

The SEC reminded companies of their compliance obligations under the Holding Foreign Companies Accountable Act (the "HFCAA"), including disclosures by HFCAA-identified issuers of (i) the percentage of shares owned by foreign government entities, (ii) the presence of a controlling financial interest over the issuers by government entities in the foreign jurisdiction, (iii) Chinese Communist Party (the "CCP") officials who are on the boards of the issuers and (iv) presence of any "charter" of the CCP in the issuers' articles of incorporation. In this respect, the sample comment letter sets out typical requests the SEC may have, mostly relating to materials used by the issuers and relied upon as the basis for the above disclosure requirements. The letter also asks about any material impact that intervention or control by the Chinese government may have on the business and value of securities of China-Based Companies.[8] In addition, the letter also focuses on disclosure about the material impacts of certain statutes such as the Uyghur Forced Labor Prevention Act, prohibiting, among others, import of goods from the Xinjiang Uyghur Autonomous Region of China, on business segments, products and operations of respective issuers.

Sanctions

As the Russian invasion of Ukraine continued into its second year, more robust sanctions were introduced by the United States. In March 2023, the U.S. Deputy

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[8] The SEC further noted that there are other ways in which a government or any person can exercise control over a company beyond appointing members to the board or having formal powers under the company's organizational documents. The SEC highlighted that the federal securities laws and regulations generally define the term "control" more broadly.

Attorney General delivered a speech emphasizing that sanctions are becoming the "new FCPA." While the SEC has not issued guidance or sample comment letters similar to those prepared by CorpFin in 2022, there exists a continued focus by U.S. federal prosecutors on monitoring compliance and bringing actions for sanctions breaches. In addition to disclosure requirements set out in last year's model comment letter,[9] issuers should also consider developing sanctions policies or updating previously existing ones in order to keep pace with the current compliance challenges and satisfy their obligations to implement effective controls.

Nasdaq Board Diversity

As a reminder, the Nasdaq board diversity rule, approved by the SEC in August 2021, requires Nasdaq-listed companies to disclose a board diversity matrix within one year of listing (and, subsequently, annually by December 31) and to have diverse directors or explain why they do not have diversity on their board. The relevant rules applicable to FPIs are less onerous than those applicable to U.S. domestic issuers, in relation to the specific criteria for diverse board members (i.e., at least one diverse director who self-identifies as female, and the second director that self-identifies as female, LGBTQ+ or an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the country of the issuer's principal executive offices) and the format for disclosure of the board diversity matrix.

Issuers, including FPIs, must have had, or have explained why they do not have, at least one diverse director by December 31, 2023 (or one year from listing, if later). They must also have, or explain why they do not have, at least two diverse directors by December 31, 2025 for companies listed on The Nasdaq Global Select Market or The Nasdaq Global Market or December 31, 2026 for companies listed on The Nasdaq Capital Market (or, in each case, two years from listing, if later). There are also more relaxed rules for companies with five or fewer directors.

On October 18, 2023, the Fifth Circuit, in *Alliance for Fair Board Recruitment v. SEC*, upheld Nasdaq's board diversity rule.[10] The National Center for Public Policy Research and the Alliance for Fair Board Recruitment sued the SEC, arguing that the rule is unconstitutional under the Fifth Amendment's equal protection clause and the First Amendment's freedom of expression clause. The petitioners also argued that the SEC exceeded its authority under the Exchange Act and the Administrative Procedure Act in approving the rule. Upholding the rule, the Fifth Circuit found that Nasdaq is not a state actor, the rule is not a state action subject to such constitutional challenges and the SEC

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9 Refer to the Debevoise In Depth dated January 26, 2023 (accessible here).

10 Refer to the Debrief dated October 20, 2023 (accessible here).

did not exceed its authority in approving the rule. The petitioners have said they intend to appeal the ruling to the U.S. Supreme Court. We will continue to monitor the case.

Public Reporting for Issuers of Rule 144A Bonds

As noted in last year's Debevoise In Depth, in October 2022, the staff of the SEC's Division of Trading and Markets issued a no-action letter, temporarily delaying implementation of Rule 15c2-11 under the Exchange Act, which governs the publication of, and establishes current information and diligence requirements for a broker-dealer seeking to initiate (or resume), quotations for securities in over-the-counter markets, with respect to fixed-income securities sold in compliance with Rule 144A under the U.S. Securities Act of 1933, as amended ("Rule 144A"), until January 4, 2025. On October 30, 2023, the SEC granted broker-dealers permanent exemptive relief from the requirements of Rule 15c2-11 for fixed income securities sold under Rule 144A. The exemptive relief confirms that broker-dealers are not required to establish that Rule 15c2-11's "specified information" about an issuer is current and publicly available, or that the information is accurate and from a reliable source, before publishing quotations for that issuer's fixed-income securities to be sold in compliance with Rule 144A.

Share Repurchase Disclosures

On May 3, 2023, the SEC adopted share repurchase disclosure modernization rules (the "Share Repurchase Rules") requiring additional disclosures by issuers of repurchases of equity securities registered under Section 12 of the Exchange Act made by or on behalf of the issuer or by any "affiliated purchaser" of the issuer, originally scheduled to apply to most FPIs beginning with the first periodic report on Form 20-F in respect of the first full fiscal quarter that began on or after October 1, 2023.[11] The Share Repurchase Rules required (i) most issuers to disclose their daily share repurchase activity on a quarterly basis, (ii) additional disclosures in periodic reports regarding the objective and structure of an issuer's repurchase program, and policies relating to trading activity by officers and directors during repurchase programs, and (iii) issuer periodic reports to identify trading activity by officers and directors in close proximity to an announcement of a share repurchase program.

On December 19, 2023, the Fifth Circuit vacated the Share Repurchase Rules. This follows the October 31, 2023 decision by the Fifth Circuit that the SEC violated the Administrative Procedure Act in its rulemaking process and directing the SEC to "correct the defects" in the Share Repurchase Rules by November 30, 2023,[12] to which the SEC notified the court it was not able to correct the deficiencies by the deadline. The

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[11] Refer to the Debevoise Update dated May 12, 2023 (accessible here).

[12] Refer to the Debrief dated November 27, 2023 (accessible here).

SEC may decide to appeal the court's decision or propose new rules addressing the identified defects. We will continue to monitor for developments.

Beneficial Ownership Reporting

On October 10, 2023, the SEC adopted significant amendments to the rules governing beneficial ownership reporting under Sections 13(d) and 13(g) of the Exchange Act, intended to update reporting requirements for modern markets and reduce information asymmetries between large shareholders and the public.[13]

Filing deadlines for Schedule 13D and Schedule 13G have been accelerated. For Schedule 13D, the initial filing deadline is shortened from 10 days to five business days, and amendments must be filed within two business days (rather than "promptly"). For certain Schedule 13G filers (qualified institutional investors and exempt investors), the initial filing deadline is shortened from 45 days after the end of a calendar year to 45 days after the end of the calendar quarter in which the investor beneficially owns more than 5% of the covered class. For other Schedule 13G filers (passive investors), the initial filing deadline is shortened from 10 days to five business days. For all Schedule 13G filers, amendments must now be filed 45 days after the calendar quarter (rather than after the calendar year) in which a material change occurred. Schedule 13G amendment obligations for qualified institutional investors and passive investors are also accelerated when their beneficial ownership exceeds 10% or increases or decreases by 5%. To ease the administrative burden on filers, the amendments extend the filing cutoff times for Schedules 13D and 13G from 5:30 p.m. to 10:00 p.m. Eastern time.

The amendments also revise Item 6 of Schedule 13D to clarify that filers must disclose interests in all derivative securities, including cash-settled derivative securities, that use the issuer's equity security as a reference security. The adopting release also provides guidance to clarify circumstances under which two or more persons have formed a "group" that would be subject to the beneficial ownership reporting requirements. To facilitate investors' and market participants' access, compilation and analysis of information, the amendments require Schedule 13D and Schedule 13G to be filed using a structured, machine-readable data (XML-based) language.

Compliance with the revised Schedule 13D and Schedule 13G filing deadlines will be required beginning on February 5, 2024 and September 30, 2024, respectively. Compliance with the new structured data requirement for Schedules 13D and 13G will be required beginning on December 18, 2024 (with voluntary compliance permitted beginning on December 18, 2023).

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[13] Refer to the Debevoise In Depth dated October 12, 2023 (accessible here).

In addition, on December 22, 2023, the U.S. President signed into law the National Defense Authorization Act for Fiscal Year 2024, which notably did not include the U.S. Senate's original proposal to extend Section 16 of the Exchange Act to securities issued by FPIs. As a result, officers, directors and 10% shareholders of FPIs will continue to not be subject to reporting obligations, and short-swing profit liability, of Section 16 of the Exchange Act in respect of such issuers' securities.

Filing Mechanics

The SEC requires companies to provide the information contained in the financial statements in registration statements and periodic and current reports in machine-readable format using eXtensible Business Reporting Language ("XBRL"). In connection with the SEC's recent rulemaking, XBRL and/or Inline XBRL tagging has been expanded to apply to clawbacks, cybersecurity and Rule 10b5-1 plan disclosures. In September 2023, CorpFin published a sample comment letter to guide companies in their compliance with the XBRL requirements. Inline XBRL tagging for cybersecurity disclosures begins one year after initial compliance with the related disclosure requirement (i.e., beginning with annual reports for fiscal years ending on or after December 15, 2024). The Inline XBRL tagging requirement for compensation clawbacks and Rule 10b5-1 plan disclosure begins when the related disclosure requirement becomes effective.

U.S.-listed companies are also now required to furnish their "glossy" annual reports electronically on EDGAR in PDF format no later than the date on which the report is first sent or given to stockholders.[14] All Form 144s, relating to certain sales of securities pursuant to Rule 144 under the Securities Act, are also now required to be filed electronically on EDGAR.[15]

Finally, effective October 1, 2023, the filing fee to register securities with the SEC under the Securities Act increased from $110.20 to $147.60 per $1,000,000 of offered securities.

Proxy Advisor Updates

On December 19, 2023, Institutional Shareholder Services ("ISS") issued its 2024 policy update for issuers listed in the Americas, including FPIs. ISS adopted only one policy update for the U.S. market, which codifies its case-by-case approach when analyzing shareholder proposals requiring that executive severance arrangements or payments be submitted for shareholder ratification. In addition, the updated policy (i) harmonizes the factors used to analyze both regular termination severance as well as change-in-

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[14] Refer to the Debrief dated January 13, 2023 (accessible here).

[15] Refer to the Debrief dated April 14, 2023 (accessible here).

control related severance (golden parachutes) and (ii) clarifies the key factors considered in such case-by-case analysis.

On November 16, 2023, Glass Lewis released its 2024 Proxy Voting Policy Guidelines for U.S.-listed issuers, including FPIs. The guidelines include new policy sections addressing cyber risk oversight in response to the SEC's continued regulatory focus, executive ownership guidelines and the utility of clawback provisions in line with the new listing requirements to comply with Rule 10D-1 under the Exchange Act. Glass Lewis also updated its policies on material weaknesses in internal controls over financial reporting, as well as board oversight of environmental and social issues.

UK Developments

Listing Reform Update

Throughout 2023, the UK government and the Financial Conduct Authority (the "FCA") continued to review the capital markets regime.

The proposed reforms to the Listing Rules and the Prospectus Rules aim to make the London Stock Exchange (the "LSE") a more competitive listing venue. The most significant proposal is the replacement of the premium and standard segments with a single segment for equity shares of commercial companies. The new, single segment, if implemented as proposed, would have less onerous eligibility requirements than those that currently apply to issuers seeking a premium listing, a reduction in the thresholds for related party transactions and increased accommodation for issuers with dual-class share structures. Notably, however, the proposals would not affect the listing regime for debt securities and depositary receipts (for which the standard listing category would still apply) and a number of questions remain, such as how standard listed issuers would benefit (given their disclosure obligations will increase). The FCA sought feedback on this proposal (CP23/10) over the summer,[16] and a final consultation paper was published in December 2023 (CP23/31).[17]

This final consultation paper includes most of the earlier proposals for reforms to the UK listing regime and provides additional details on the proposals. The new draft rules contemplate a transitional segment for standard listed issuers so that they can adjust to the requirements of the new regime. Furthermore, a new secondary listing regime is envisaged to allow non-UK companies with a primary listing outside the LSE to list on the LSE through a new, alternative segment. Finally, the FCA has proposed rules

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16 Refer to the Debevoise Update dated May 15, 2023 (accessible here).

17 Refer to the Debevoise Update dated January 2, 2024 (accessible here).

governing significant transactions, which would remove compulsory shareholder votes for most significant transactions and introduce a notification regime for transactions where any of the class tests are equal to or exceed 25% and key financial information to be included in the notification. The overall ethos of the proposed reforms is to move towards a more disclosure-based regime as outlined in CP23/10. The FCA believes that the proposed changes are required to foster the economic conditions the United Kingdom needs for growth. The consultation period for the proposals will end on March 22, 2024, with final rules expected in the second half of 2024.

The proposed reforms extend not just to the listing regime but also to secondary offerings. It has been suggested that the preemption rights regime would continue to apply to secondary offerings and may, in fact, be enhanced given the fundamental protection it provides shareholders in UK companies. In May 2023, a further consultation paper was published on secondary offerings, which considered, among other things, whether issuers should be exempt from being required to publish a prospectus if the further issuance is below a certain percentage of existing capital. Feedback on this consultation paper was published in December 2023. On the threshold issue, respondents provided mixed responses as to where the threshold should be set. It remains to be seen what proposals on secondary offerings will be taken forward. Further consultation and draft rules are expected from the FCA in summer 2024.

In relation to Prospectus Rules reform, further to the draft statutory instrument the government published in December 2022, a near final statutory instrument was published in July 2023. Alongside this, the FCA published six consultation papers on how it will exercise its functions under the new regime. If adopted, the main objectives of the new regime are to increase flexibility, facilitate wider participation in the ownership of securities and delegate a greater degree of responsibility for the regime to the FCA, with the hope that they can set workable policies for issuers. Looking forward, the FCA has indicated that further consultation will occur in summer 2024, although no guidance has been given on when finalized rules will be published.

Alongside the amendments to the Listing Rules and Prospectus Rules, the UK government established the Accelerated Settlement Taskforce in December 2022 to explore how the United Kingdom can move to a T+1 settlement cycle for securities trades. The Taskforce is expected to publish its initial findings in January 2024 (despite being originally scheduled for December 2023), with a long-term view to transition in 2025, following the expected transition in the United States in May 2024. Finally, there is a general consensus among market participants that there is a need to reform investment research post MiFID. A report published by the UK government highlighted that high-quality research that is easily accessible by investors benefits the entire market. However, currently, since buyside actors pay for the research, they typically do not release it. Early discussions have taken place with the UK government about

funding a research platform and further FCA consultation is expected in the first half of 2024 on an accelerated timetable.

Market Abuse Regulation

On November 17, 2023, the FCA issued a rare public censure to NMC Health Plc ("NMC"), a former FTSE 100 healthcare company headquartered in the United Arab Emirates, for market manipulation under EU Market Abuse Regulation (596/2014) ("EU MAR"). The company was found to have understated its debt position by nearly $4 billion, and though the FCA chose not to impose a financial penalty (so to minimize the impact on creditors, as NMC had entered administration in 2020), it decided that public censure was an appropriate alternative. EU MAR applied to financial instruments trading on a UK-regulated market until December 31, 2020, when the regulation was onshored into UK law. As NMC's shares were admitted to trading on the LSE in 2012 (following which it entered the FTSE 100 in 2017), the FCA had jurisdiction for the purposes of EU MAR. NMC had been operating two sets of accounts prior to certain public financial disclosures it made between February 2019 and March 2020, with those ultimately used in the preparation of such disclosures omitting significant liabilities. Debt facilities, guaranteed by NMC and drawn upon by related parties of its subsidiary, were not included in the company's published debt figures. The FCA concluded that NMC had committed market abuse in breach of Article 15 of EU MAR by publishing this false or misleading information and making false or misleading statements when it initially challenged the allegations. Given that the FCA seldom issues Final Notices for companies in breach of EU MAR, other non-UK-based issuers with equity or debt listed on the LSE or other European exchanges should be mindful of the relevant regulatory authority's powers to penalize or censure companies for breaches of EU or UK MAR, as applicable.[18]

Proxy Advisor Updates

Glass Lewis published its 2024 UK Benchmark Policy Guidelines outlining how the proxy advisor will direct shareholders to vote at AGMs in 2024.

Key changes to the updated guidelines included:

- **Director Attendance at Board and Committee Meetings**. Glass Lewis recommends voting against the reelection of directors who fail to attend either 75% of board meetings or an aggregate of 75% of board and applicable committee meetings. Exceptions are in place for those in their first year of a directorship or where mitigating circumstances exist.

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[18] Refer to the Debrief dated November 28, 2023 (accessible here).

- **Remuneration**. In order to align interests, Glass Lewis recommends that companies adopt a policy of minimum executive share ownership lasting up until a set period of time after employment.

- **Cyber Risk Oversight**. Where a company has been materially impacted by a cyberattack, Glass Lewis expects that shareholders receive periodic updates on the company's steps to resolve the attack. Where the board's oversight is insufficient or such updates are not provided, Glass Lewis may recommend voting against the appropriate directors.

- **Accountability for Climate-Related Issues**. For FTSE 100 companies whose greenhouse gas emissions represent a financially material risk, Glass Lewis may recommend voting against the reelection of certain directors if the disclosure and oversight of climate-related issues is inadequate.

The ISS published its Benchmark Policy Updates for 2024 in December 2023, although none of the proposed amendments relate to the United Kingdom.

Transitional Period to UK GAAP or IAS

Effective September 29, 2023, the Accounting Standards (Prescribed Bodies) (United States of America and Japan) (Amended) Regulations 2023 removes the expiry of the prior 2015 regulations permitting UK-incorporated parent companies listed on U.S. or Japan securities exchanges to have four years from their date of incorporation to prepare their group accounts in accordance with UK GAAP or International Accounting Standards ("IAS"). The regulations require companies to disclose, in a note to their accounts, their date of incorporation and the number of financial years remaining to transition to preparing their accounts under UK GAAP or IAS.

Stamp Duties on Capital-Raising in Relation to Securities of UK Companies

Since 1996, UK legislation has existed that applies a 1.5% stamp duty or stamp duty reserve tax ("SDRT") on certain capital-raising activities, in particular the issuance or deposit of securities of a UK company into depositary receipt programs (such as American depositary receipts issued by U.S. depositary banks) or settlement and clearance systems (such as The Depository Trust Company, Euroclear or Clearstream). In the 2010s, when the United Kingdom was still a member of the European Union, the UK and EU courts found that these stamp duties were incompatible with EU laws on the taxation of capital-raising and, by virtue of the supremacy of EU law over UK law, the UK tax authorities were not able to collect such stamp duties from taxpayers carrying on capital-raising activities. More recently, following the United Kingdom's departure from the EU, the UK government passed the Retained EU Law (Revocation and Reform) Act 2023, which, effective January 1, 2024, removes from a broad sweep of

UK laws the domestic recognition of the supremacy of EU law. As a result, technically, HMRC would be able to lawfully enforce the 1.5% stamp duties on capital-raising activities going forward. While it appears that this is not their intention, the proposed method of dealing with these stamp duties entails some uncertainty.

On September 14, 2023, the UK government proposed draft legislation that would remove the 1.5% stamp duties from (i) all issuances of securities (including issuances of bearer instruments) and (ii) transfers of securities of a UK company insofar as they relate to "capital-raising arrangements," defined as arrangements pursuant to which securities are issued for the purposes of raising new capital. On October 12, 2023, the consultation period closed for the draft legislation, which is proposed to take effect from January 1, 2024 but is unlikely to be passed into law until sometime later in 2024. We await HMRC's clarification, likely in guidance that will follow the new law coming into effect, on the interpretation of the new rules, which contain technical elements that were not a feature of the prior EU law. This, in combination with the retroactive effect of the new legislation, creates some uncertainty for capital markets participants who are looking to transact in early 2024, and they should closely monitor developments.

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