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- On February 10, the SEC issued 15 new Compliance and Disclosure Interpretations (CDIs) on implementing the "pay versus performance" (PvP) disclosure rules that were adopted on August 25, 2022 (PvP Rules). The PvP Rules added new Item 402(v) to Regulation S-K, requiring public companies to disclose the relationship between the executive compensation actually paid to the named executive officers (NEOs) and the financial performance of the company in their proxy or information statements, to the extent required to include executive compensation disclosure.

  The key requirement of the PvP Rules is the inclusion of a PvP table illustrating compensation actually paid to the NEOs (compared to the total or average compensation paid to such NEOs as reported in the Summary Compensation Table), company and peer total shareholder return (TSR), and company financial performance for the five most recently completed fiscal years. The PvP Rules also require tabular disclosure of three to seven of the most important performance measures used to determine compensation for the current fiscal year.

  Among other aspects of the PvP Rules, the CDIs provide guidance on:

- (i) the "company-selected measure" used to link compensation actually paid to the NEOs to company performance;
- (ii) the peer group that may be used for the TSR comparison;
- (iii) the "net income" metric that must be disclosed in the PvP table; and
- (iv) questions that have arisen in respect of calculating compensation actually paid to the NEOs and related footnotes.

  A more detailed analysis of the CDIs by Katten's Employee Benefits and Executive Compensation attorneys is forthcoming.

- On January 31, the Securities and Exchange Commission (SEC) published the latest update to the Division of Corporation Finance's Financial Reporting Manual (FRM). The FRM is a resource for issuers on all topics relating to the presentation of financial statements and financial information. In addition to removing certain outdated information, the latest update reflects amendments to Rules 3-10 and 3-16 and the addition of new Rules 13-01 and 13-02 (relating to guarantors, issuers of guaranteed securities and issuers of collateralized securities) of Regulation S-X, all of which became effective in January 2021, and updates the revenue threshold for qualification for issuers to qualify as an "emerging growth company", which is based on an inflation-related adjustment announced in September 2022.
- On January 30, the SECproposed amendments to its ethics rules that govern trading restrictions for SEC employees and their spouses and children. Currently, SEC employees are required to preclear securities transactions and comply with certain minimum holding periods and are prohibited from, among other things, transacting in securities of companies the SEC is investigating, engaging in short selling, transacting in derivatives, purchasing shares in an IPO until seven calendar days after the IPO is completed, or purchasing or carrying securities on margin. The amendments would also ban employees from investing in financial industry sector funds and would authorize the SEC to collect data on employees' transactions in certain "covered" securities.
- The comment period for the proposed rules will remain open until the later of (i) 30 days after the proposal is published in the Federal Register and (ii) March 31, 2023.
- On January 27, the SEC published new Compliance and Disclosure Interpretations regarding the SEC's recently adopted clawback rules, which will become effective in November 2023. For a summary of the new clawback rules, please see Katten's coverage in the December 2022 issue of the *Compass*. The CD&Is cover the following topics:
  - One of the new disclosure requirements in the new clawback rules is the requirement to include a set of new checkboxes on the cover page of Forms 10-K, 20-F and 40-F, indicating whether the financial statements included in the report reflect the correction of an error to previously issued financial statements, and another checkbox indicating whether any of the error corrections required a recovery analysis under the company's clawback policy. The SEC indicated in the CD&I that while the checkboxes and other disclosure requirements will be included in the publicly available forms beginning in January 2023, the SEC does not expect issuers to provide such disclosure until they are required to have a recovery policy under the applicable listing standard.
  - The CD&Is clarify that Form 20-F and Form 40-F filers should also be prepared to include disclosure for each current and former executive officer for members of their administrative,

supervisory, or management bodies, for whom the issuer otherwise provides individualized compensation disclosure in the filing.

  - The CD&Is clarify that for plans that take into account incentive-based compensation, an issuer will be expected to clawback the amount contributed to the notional account based on erroneously awarded incentive-based compensation and any earnings accrued to date on that notional amount.

- On January 25, the SEC proposed a rule intended to further minimize conflicts of interest in securitization transactions. The rule would prohibit an underwriter, placement agent, initial purchaser, or sponsor of an asset-backed security (ABS), including affiliates or subsidiaries of those entities, from engaging, directly or indirectly, in any transaction that would involve or result in any material conflict of interest between the securitization participant and an investor in such ABS.
- The comment period for the proposed rule will remain open until the later of (i) 30 days after the proposal is published in the Federal Register and (ii) March 27, 2023.
- On January 4, the SEC published its semiannual regulatory agenda and plans for upcoming rulemaking. The agenda separates items into a "Proposed Rule" and "Final Rule" stage, and identifies the estimated completion time for each item. Notable entries include:

Topic	**Brief Description**	**Estimated Timing for Next Action**	**Fu**
Proposed Rule Stage			
Rule 144 Holding Period	Proposal to revise the Rule 144 holding period determination for securities acquired upon the conversion or exchange of market-adjustable securities of issuers whose securities are not publicly listed.	Comment period ended March 22, 2021. SEC expects to revise the original proposal by October 2023.	SE Pr Ka
Regulation D and Form D Improvements	Proposed amendments to Regulation D, including updates to the accredited investor definition, and Form D.	SEC expects to propose rules by April 2023.	

Corporate Board Diversity	Proposal to enhance disclosure about the diversity of board members and nominees.	SEC expects to propose rules by October 2023.	
Final Rule Stage			
Cybersecurity Risk Governance	Proposal to enhance and standardize disclosure regarding cybersecurity risk management, strategy, governance and incident reporting by public companies.	Comment period ended May 9, 2022. SEC expects to adopt rules by April 2023.	SE Pr Ka
Climate Change Disclosure	Proposal to enhance disclosure regarding climate-related risks and opportunities.	Comment period ended June 17, 2022. SEC expects to adopt rules by April 2023.	SE Pr Ka
Special Purpose Acquisition Companies	Proposal to implement specialized disclosure requirements with respect to compensation paid to sponsors, conflicts of interest, dilution, and the fairness of SPAC business combination transactions.	Comment period ended June 13, 2022. SEC expects to adopt rules by April 2023.	SE Pr Ka
Investment Company Names	Proposal to amend Rule 35d-1 under the Investment Company Act of 1940 (names rule) to include specific requirements related to ESG language in fund names.	Comment period ended August 16, 2022. SEC expects to adopt rules by October 2023.	SE Pr Ka

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