

Key Considerations for the 20-F Season

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Today's Topics

- ◆ Recent Developments
- ◆ Timing Issues
- ◆ Annual Updates
- ◆ AI Disclosure and Risk Factors
- ◆ Notice and Access for Shareholder Meetings
- ◆ Section 16 Reporting
- ◆ MD&A Tips

Recent Developments

- ◆ No new 20-F disclosure items this year, as opposed to recent years:
 - Disclosure on whether have insider trading policy and inclusion of policy as an exhibit
 - Cybersecurity disclosure - processes for assessing, identifying, and managing cybersecurity risks
- ◆ Policy shifts
 - DEI programs currently in disfavor (Nasdaq board diversity chart struck down in 12/24)
 - Proposed climate disclosure rules on hold
 - Crypto activities supported
 - “America First”
 - Concept release on foreign private issuers (FPIs)
 - Section 16 reporting for FPIs (below)

Timing issues

- ◆ 20-F due within four months of end of prior fiscal year (typically April 30 for Israeli companies)
- ◆ File 20-F by end of Q1 to keep open registration statements current
 - if have F-1 on file (as opposed to F-3), need to file post-effective amendment by end of Q1 to keep current

Annual Updates

- ◆ Do a form check! Items not relevant last year may be relevant this year, e.g., buybacks, auditor change

When Reviewing Last Year's Risk Factors

- ◆ If risk regarding one-time event has already occurred, no longer a risk and can be removed
- ◆ Update to integrate recent events into risk factors to provide specific examples of risks
 - cyber attack, debt default
- ◆ Israel risk factor – consider if to address impact of further marginalization of Israel
- ◆ Supply chain - Red Sea, Venezuela
- ◆ Effect of US tariffs
- ◆ AI risk factors (below)

Annual Updates

When Reviewing Last Year's Exhibit List:

- ◆ Remove material contracts fully performed
- ◆ Check previously filed exhibits, such as compensation policy and AOA, which may have been amended in last year
- ◆ Consider redactions of new exhibits – may need sufficient time in advance to coordinate with counterparty

AI Disclosure

- ◆ More scrutiny and risk on AI-related disclosure as companies seek to attract investor interest
- ◆ Don't overstate use of AI or mislead about its application; verify that all statements about AI usage are accurate and supported

AI Disclosure

- ◆ Avoid simply listing AI as a capability or buzzword. Tailored disclosure enhances transparency, enabling investors to better understand how AI is used and associated risks and opportunities
 - Define what company means by "artificial intelligence" – machine learning algorithms, predictive models, or other forms of AI?
 - Explain specific applications of AI and how AI contributes to strategic objectives or operations
 - Who developed the AI- proprietary or sourced from third-party vendors?
- ◆ These details provide important context for assessing risks and dependencies

AI Risk Factors

- ◆ More than 70% of S&P 500 companies now flag their use of AI as a material risk according to a recent report by The Conference Board
- ◆ That figure represents a sharp increase from just 12% in 2023

AI Risk Factors

Reputational Risk

- ◆ Most widely disclosed issue, at 38%. Reflects potential impact of losing trust
- ◆ Broad application - service breakdown, mishandling of consumer privacy or data, customer-facing tool that gives incorrect or inconsistent results or potential algorithmic bias (AI driven decisions)

Risk Factor Example –

- ◆ *“Issues in use of artificial intelligence, including machine learning, computer vision, and use and protection of customer data, may result in reputational harm or liability”*

AI Risk Factors

Expanded Cybersecurity Risk

- ◆ AI intensifies scale, sophistication and unpredictability of cyber attacks by enlarging attack surfaces through new data flows, tools, and systems

Risk Factor Example –

- ◆ *“The increasing use of AI in our operations... introduces new and evolving cybersecurity risks. AI systems can be vulnerable to novel attacks... corrupt training data or steal proprietary algorithms... disrupting critical AI-driven functions, leading to operational failures and inaccurate data analysis....”*

AI Risk Factors

Failure to Compete

- ◆ For many companies, AI is a double-edge sword: the same technology that enhances their offerings and drives demand can also accelerate decline of older products/services that cannot compete with newer, more intelligent alternatives

Risk Factor Example –

- ◆ *“Our revenue growth could slow or our revenue could decline for a number of reasons, including... the increasing prominence of new technology like artificial intelligence... and reduced demand for our platform.”*
- ◆ *“We may not be successful in adopting and implementing new technologies, such as...”*

AI Risk Factors

Legal Exposure

- ◆ As AI regulations evolve and governments establish security safeguards to protect the public, companies are increasingly citing compliance obligations as risk factors—particularly cybersecurity and data privacy

Risk Factor Example –

- ◆ *“We may be unable to comply with rapidly evolving laws, regulations and standards, including those related to artificial intelligence, which could subject us to significant liability, penalties and reputational harm.”*

Notice and Access for Shareholder Meetings

- ◆ Leniency added to Israeli Companies Regulation in extending maximum period between record date and AGM date from 40 to 60 days
- ◆ Opens opportunity for Israeli FPIs to send SEC proxy material via notice and access method
- ◆ No need to make copies of proxy statement for shareholders
- ◆ Required for U.S. domestic filers; optional for FPIs

Notice and Access for Shareholder Meetings

- ◆ Companies post their proxy materials on a website which maintains anonymity of person accessing such website (no tracking cookies)
- ◆ Companies send to shareholders a notice informing them that proxy materials are available on the site with code to access the materials and vote online and how to request hard copies if preferred
- ◆ Notice must be mailed in same way as in traditional method and sent separately from other communications
- ◆ Notice must be sent at least 40 calendar days before shareholder meeting; need additional time for intermediaries (Broadridge) to send – extra time

Notice and Access for Shareholder Meetings

- ◆ Pros
 - environmentally friendly - can reduce significantly paper usage
 - can save printing and mailing costs, depending on number and types of shareholders
- ◆ Cons:
 - may not actually be less expensive - brokers are entitled to handling fees, which can increase costs
 - shareholders may request hard copies
 - may deter voting due to method of delivery

Section 16 Reporting

Background

- ◆ Effective March 18, 2025, directors and officers of FPIs will be subject to reporting requirements under Section 16(a) of Securities Exchange Act – mirroring requirements for D&Os of US domestic companies
- ◆ Unlike US domestic filers, the law does not apply Section 16(b) (liability for short-swing trades) or apply to 10% beneficial owners
- ◆ SEC is required by March 18, 2025 to promulgate regulations to implement the new requirements

Section 16 Reporting

Background

- ◆ Responsibility to comply is primarily with D&Os and not the company, but most public companies assist in preparing and filing the Section 16 reports on their behalf
- ◆ “Beneficial owner” is any person who, directly or indirectly, has or shares a direct or indirect pecuniary interest in the equity securities, i.e., the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the securities
 - Includes securities held by immediate family members sharing a household
 - Excludes shares in a broad-based, publicly traded stock index
 - Reporting person may disclaim beneficial ownership of reported securities

Section 16 Reporting

Forms

- ◆ Form 3 - Initial Statement of Beneficial Ownership – must be filed by all directors and officers on March 18, 2025 (even if they hold no securities). Generally must be filed must be filed within 10 calendar days of a person becomes a director or officer
- ◆ Form 4 - Statement of Changes in Beneficial Ownership – must report purchases and sales, and certain equity awards and derivative security transactions, including exercise of options, and withholding of shares to pay taxes. Must be filed within two business days after the reportable transaction occurs
- ◆ Form 5 - Annual Statement of Changes in Beneficial Ownership - report certain transactions eligible for deferred reporting or not reported on a Form 4. Must be filed within 45 days of FY end

Section 16 Reporting

Transaction Codes

General Transaction Codes

- P — Open market or private purchase of non-derivative or derivative security
- S — Open market or private sale of non-derivative or derivative security
- V — Transaction voluntarily reported earlier than required

Rule 16b-3 Transaction Codes

- A — Grant, award or other acquisition pursuant to Rule 16b-3(d)
- D — Disposition to the issuer of issuer equity securities pursuant to Rule 16b-3(e)
- F — Payment of exercise price or tax liability by delivering or withholding securities incident to the receipt, exercise or vesting of a security issued in accordance with Rule 16b-3
- I — Discretionary transaction in accordance with Rule 16b-3(f) resulting in acquisition or disposition of issuer securities
- M — Exercise or conversion of derivative security exempted pursuant to Rule 16b-3

Section 16 Reporting

Transaction Codes (cont.)

Derivative Securities Codes (Except for transactions exempted pursuant to Rule 16b3)

- C — Conversion of derivative security
- E — Expiration of short derivative position
- H — Expiration (or cancellation) of long derivative position with value received
- O — Exercise of out-of-the-money derivative security
- X — Exercise of in-the-money or at-the-money derivative security

Other Section 16(b) Exempt Transaction and Small Acquisition Codes (except for Rule 16b-3 codes above)

- G — Bona fide gift
- L — Small acquisition under Rule 16a-6
- W — Acquisition or disposition by will or the laws of descent and distribution
- Z — Deposit into or withdrawal from voting trust

Other Transaction Codes

- J — Other acquisition or disposition (describe transaction)
- K — Transaction in equity swap or instrument with similar characteristics
- U — Disposition pursuant to a tender of shares in a change of control transaction

Section 16 Reporting

Potential Exposures

- ◆ Public availability of trading information may draw scrutiny on trades, including timing
- ◆ Potential civil penalties, cease-and-desist orders for non-compliance
- ◆ Reputational harm for non-compliance - SEC may adopt requirement that company disclose delinquent Section 16 filers (like US domestic filers)
- ◆ Late Section 16 filings – may trigger internal compliance escalation (such as audit committee attention), potential discipline

Section 16 Reporting

Next steps

- ◆ Board to determine who is an “officer” – different from Israel Companies Law definition and 20-F definition:
 - President, CFO, principal accounting officer (or, if there is no such accounting officer, the controller), VP in charge of a principal business unit, division or function (such as sales, administration or finance) and any other officer or person who performs a policy-making function
Principal accounting officer is typically not listed in 20-F; could be CFO
- ◆ Obtain SEC filing codes for D&Os – start ASAP!
- ◆ Obtain necessary POAs from D&Os to allow the company to file on their behalf

Section 16 Reporting

Internal Compliance Procedures

- ◆ Ensure that insider trading policy requires pre-clearance of trades by D&Os and require that pre-clearance requests include data for Form 4 preparation
- ◆ Designate section 16 “compliance owner” (and backup) to ensure reportable transactions are captured quickly, forms are prepared correctly and filed on time and escalate for potential late-filing issues
- ◆ Establish system to require notice to compliance owners of transactions from (i) D&Os, (ii) plan administration/section 102 trustee (for option exercises), (iii) payroll/HR for equity withholding, (iv) legal/finance dep’t for security issuances and (v) brokers for trades under Rule 10b5-1 plans

Section 16 Reporting

Internal Compliance Procedures (cont.)

- ◆ Document roles – who prepares forms, who reviews, who submits
- ◆ Establish procedures and internal timelines for preparing and filing of each type of form, including internal deadlines
- ◆ maintain a calendar for initial Form 3 obligations, recurring equity events, blackout windows, and year-end Form 5 checks
- ◆ Initial and periodic training to D&O and other parties involved on a practical level; emphasize importance of timely filings

MD&A Tips

- ◆ One of top targets of SEC Staff comments
- ◆ Not just an exercise to update numbers
- ◆ Not “elevator music”

MD&A Tips

- ◆ MD&A is intended to satisfy three principal objectives:
 - provide narrative explanation of the company's financial statements that enables investors to see the company through the eyes of management
 - provide context within which financial information should be analyzed – for example, trends in the market, competition
 - provide information about quality of, and potential variability of, the company's earnings and cash flow, so that investors can ascertain likelihood that past performance is indicative of future performance

MD&A Tips

Focus

- ◆ “*What keeps management up at night?*”
- ◆ Challenges – sufficient capital, revenue stream uncertainty, debt repayment, reliance on suppliers or other third parties, competition, technology, slow enrollment in clinical trials
- ◆ Opportunities – extend runway, reduce expenses, expand customer/supplier base, investment in product improvements, strategic partnerships, expand sites to boost enrollment

Thank you

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