PAUL HASTINGS

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Public Company Watch

Key Issues Impacting Public Companies

Overview

This edition of the Public Company Watch highlights critical updates and regulatory changes affecting public companies. Staying informed on these topics is crucial for effective compliance and strategic planning.

Highlights include:

- **SEC Will Not Defend Climate Disclosure Rules:** The SEC voted to end its defense of the climate disclosure rules; however, companies should consider other global and state climate-related disclosure requirements.
- **Delaware General Corporation Law (DGCL) Amendments:** On March 25, 2025, amendments to the DGCL were signed into law that (1) reduce a corporation's exposure to litigation risk for breaches of fiduciary duty in connection with an interested transaction and (2) impose new procedural requirements on stockholders' "books and records" demands and narrow the types of books and records that a corporation must produce.
- **Expanded Access to Confidential Draft Registration Statements:** The Staff of the SEC Division of Corporation Finance (the Staff) expanded the categories of issuer that may submit draft registration statements confidentially for review by the SEC, effective immediately. The guidance could be of particular benefit to non-well-known seasoned issuer (non-WSKI) public companies.
- **Guidance on Rule 506(c) Offerings:** The Staff issued a no-action letter facilitating issuers' reliance on Rule 506(c) to use general solicitation in private placements.
- **Other New and Updated SEC Guidance:** The Staff has been busy issuing new and updated Compliance & Disclosure Interpretations (C&DIs) related to tender offers, Rule 145(a) transactions, beneficial ownership reports and the bringing effective of non-automatically effective shelf registration statements on Form S-3 during the gap period between the filing of an issuer's Form 10-K and proxy statement, among other topics, and updating its guidance on shareholder proposals.
- **Foreign Corrupt Practices Act (FCPA) Enforcement Highlights:** An exploration of the current state of enforcement of the FCPA and what the recent executive order and Department of Justice (DOJ) guidance mean for U.S. and global companies.

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Presidential Actions

Since Inauguration Day, the Trump administration has been very active, including through issuing executive orders, announcing policy priorities and taking action through the Department of Government Efficiency. For a compilation of our ongoing commentary of the impacts of the Trump administration on businesses, including with respect to SEC enforcement actions, please visit Paul Hastings' Presidential Actions Hub.

SEC Insights

SEC Will Not Defend Climate Disclosure Rules

The death knell has rung for the climate disclosure rules adopted by the SEC in March 2024. The rules were subject to immediate challenge by states and private parties in multiple courts of appeals, with the litigation ultimately consolidated in the Eighth Circuit. In April 2024, the SEC stayed the effectiveness of the rules pending the outcome of the related litigation and worked to defend the rules' validity under the leadership of former SEC Chairman Gary Gensler. In February 2025, Acting Chairman Mark Uyeda directed the SEC Staff to request that the court not schedule the case for argument in order to provide the SEC time to deliberate and determine how to proceed with respect to the pending litigation. Finally, on March 27, 2025, the SEC voted to cease defending the rules, formally withdrew its defense and ceded its oral argument time back to the court. Though registrants will be spared from the SEC's climate disclosure regime in the near term, the ecosystem of regulators and jurisdictions addressing climate risks is significant, and public companies should be mindful of the other regulatory frameworks to which they are subject.

Companies with an international footprint will need to consider both non-U.S. regulations and the demands of non-U.S. partners who may be subject to disclosure and due diligence requirements impacting their supply chains, such as those imposed by the EU and EU-member states like the Corporate Sustainability Reporting Directive (CSRD) and Corporate Sustainability Due Diligence Directive (CSDDD) (for more information regarding these disclosure regimes, see our client alert). Companies also will need to consider applicable state-level reporting and disclosure requirements. For example, companies "doing business" in California and exceeding certain revenue thresholds will need to publicly disclose their greenhouse emissions and prepare climate risk reports in accordance with the state's recently enacted climate disclosure laws described further in our client alerts here and here. Furthermore, in January 2025, SB 3456, a bill substantively identical to California's climate disclosure laws, was introduced to the New York State Senate and is currently in committee (see our client alert for more information).

Though California's climate disclosure laws are expected to be subject to litigation for months and potentially years to come, and SB 3456's future remains uncertain and would likely be subject to future legal challenges if adopted, the imposition of climate-related disclosure regulations is here to stay, whether at the state or international level. As such, companies that will be subject to multiple climate-related disclosure requirements should take care to implement flexible and scalable internal processes to monitor and discharge the evolving climate disclosure requirements consistently and accurately across multiple jurisdictions, both to make compliance more efficient and to reduce risk.

SEC Staff Extends Accommodations to File Confidential Draft Registration Statements: A Small Gift for Certain Issuers Under Certain Circumstances

On March 3, 2025, the Staff expanded the categories of issuer that may submit draft registration statements confidentially for review by the SEC, effective immediately. Confidential submission of a registration statement is a longstanding accommodation granted by the Staff to certain issuers and provides the following benefits:

- For an issuer that is not already public in the United States, the SEC review process, which involves iterative filings of the draft registration statement, can be conducted outside of the public spotlight and, in some cases, without the public ever knowing the issuer was considering a U.S. offering or listing if subsequently abandoned by the issuer.
- For an issuer that is already public in the United States, the number of days that the registration statement is on file publicly can create uncertainty that adversely impacts its stock price. The ability to submit a registration statement confidentially reduces the period of uncertainty from approximately one week to between zero and two days. This is because the Staff traditionally takes approximately one week to decide whether to review a registration statement after it is publicly filed. The SEC declines to review the significant majority of such registration statements.

The new guidance offers a tangible benefit to companies with less than $700 million of unaffiliated market capitalization when they look to raise capital outside of a shelf takedown scenario as described in the below chart.

Category of Issuer	New Accommodation	Implication
Non-WKSI issuers filing *any* registration statement *at any time*	The prior guidance was limited to the *first registration statement* submitted *before the end of the 12th month* after an issuer completed its IPO, direct listing or Level II ADR program. Outside of an initial filing, this effectively limited the confidential submission process to newly public companies. The new guidance permits confidential submission of a registration statement *at any time*, subject to two limitations. First, the accommodation is still limited to the first submission of a particular registration statement. Therefore, if there are SEC comments, any revised registration statement will need to be filed publicly. Second, the registration statement must be filed publicly two business days prior to effectiveness, which effectively means two days prior to the pricing of an underwritten offering.[1]	This is the most impactful change and, as a result, it will likely become standard practice for the following issuers to submit their registration statements confidentially: ▪ Public companies conducting an underwritten offering on Form S-1 when ineligible for Form S-3.[2] ▪ Issuers that are not WKSIs[3] (and therefore ineligible to file an automatically effective shelf registration statement) (1) undertaking an offering using Form S-3 that is *not* a shelf takedown, or (2) filing a new shelf registration statement on Form S-3[4] in anticipation of an underwritten shelf takedown.

The guidance also benefits certain categories of issuer that were excluded from the prior guidance with limited justification. For an in-depth look at how the new guidance impacts all categories of issuer, please see our client alert.

Updated Guidance on Tender Offers and Lock-Ups in Rule 145(a) Business Combinations

On March 6, 2025, the Staff released new C&DIs related to tender offers and revised two C&DIs related to the consequences of obtaining lock-up agreements in Rule 145(a) business combinations.

In the new tender offer C&DIs, the Staff addresses procedural and disclosure-related guidance related to the following topics:

- **Impact on Timing Related to Disclosure of a Material Change:** An all-cash tender offer does not always need to remain open for at least five business days following the disclosure of a material change, but instead a shorter period could be adequate so long as there is ample time between the dissemination of the material change and the closing of the tender offer for the security holders to absorb the information and evaluate their investment/tender decision.
- **Consequences of Securing Committed Financing:** In the case of a partly financed all-cash tender offer pursuant to Regulation 14D, the subsequent securing of committed financing necessary to fully fund the tender offer constitutes a material change triggering certain obligations on behalf of the issuer. This guidance also applies to issuer tender offers subject to Rule 13e-4 and its comparable requirements.
- **Fully Financed Offer:** Obtaining a binding commitment letter from a lender is sufficient for a tender offer to be considered fully financed, but a "highly confident" letter is not sufficient.

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1 The guidance states that the Staff will consider "reasonable requests" to expedite the two business day period between public filing and effectiveness for subsequent Securities Act offerings or subsequent Exchange Act registrations. This could further shorten the time between an issuer's public filing and pricing of a deal.

2 The need for a seasoned issuer to use Form S-1 could occur due to a variety of reasons. A company that failed to timely file certain Form 8-Ks would lose the ability to use Form S-3. In addition, a company with less than $75 million unaffiliated market capitalization could find itself limited as to the amount of capital that it can raise in a primary offering using Form S-3 due to the "baby shelf" limitations, which effectively permit the company to raise no more than an amount equal to one third of its market capitalization. In that case, it is necessary to use a Form S-1.

3 A WKSI, or well-known seasoned issuer, is a company that has more than $700 million in unaffiliated market capitalization within 60 days of the filing of a registration statement or an amendment thereto. A registration statement on Form S-3 filed by a WKSI is not subject to SEC review and becomes effective automatically upon filing.

4 Form S-1 may also be used as a shelf registration statement solely for the resale on a delayed or continuous basis of shares of selling securityholders pursuant to Rule 415(a)(1)(i) under the Securities Act. Such a resale shelf registration statement could also be filed confidentially under the new guidance, although such a construct is uncommon and the first filing of such a registration statement would already have been accommodated under the prior SEC guidance.

- **Substituting a Funding Source:** In the context of an all-cash tender offer, if an offeror states that it has a binding commitment letter to fund the tender offer, but that it may fund the tender offer using an alternative funding source, and the offeror later substitutes the funding source by using a different lender or available cash, the substitution of the funding source is not considered a material change. However, the offeror should consider whether the tender offer materials should be updated in light of the new funding source and the terms thereof.
- **Material Change:** In an all-cash tender offer under Regulation 14D where the offeror discloses it has obtained a binding commitment letter to fund its purchase of securities, waiver of the funding condition could constitute a material change depending on the circumstances. If the lender does not fulfill the funding condition, but the offeror waives the condition because it uses an alternative funding source, there has been no material change. The receipt of funds in satisfaction of a funding condition is also not considered a material change. However, a material change would occur if a lender does not fulfill the funding condition and the offeror subsequently waives the condition, despite not having an alternative funding source. In this case, the offeror would be required to disclose the material change promptly, file an amended Schedule TO and promptly disseminate the updated disclosure in accordance with Rule 14d-4(d)(1). This guidance also applies to issuer tender offers subject to Rule 13e-4 and its comparable requirements.

In revised Securities Act Sections C&DIs Question 239.13 and Securities Act Forms C&DIs Question 225.10, the Staff revisits its guidance related to the impact of a target company obtaining lock-ups and written consents from company insiders approving a business combination transaction, where the target shareholders receive acquiring company securities as consideration. The impact of the revised C&DIs is summarized below.

- **Prior Guidance:** In its prior guidance, the Staff took the position that if company insiders delivered written consents approving a business combination transaction in addition to a lock-up, a Form S-4 could not subsequently be used to register the buyer shares issued in the transaction. It was the Staff's opinion that offers and sales had already been made privately to the company insiders who had already made their investment decision privately upon executing the lock-up and written consent, and that once a transaction started privately it must end privately.
- **Revised Guidance:** Pursuant to the revised C&DIs, the SEC guides that it will continue to not object to lock-ups being delivered in business combination transactions if certain conditions are met. Furthermore, the Staff states that the delivery of executed written consents from locked-up target company insiders does not preclude subsequent registration of acquisition consideration shares on Form S-4 so long as (1) the offering of securities to the company insiders delivering the written consents is made pursuant to a valid exemption from registration and (2) the securities to be registered on the Form S-4 are offered and sold only to target company shareholders who did not deliver written consents.
- **Impact:** The revised C&DIs formalize the SEC's informal guidance extending the protections of former Questions 239.13 and 225.10 to shareholders' action by written consent. We do not anticipate that the revised interpretation will be market-changing, though it will be helpful in stock business combination transactions where the buyer is able to obtain sufficient consents from target stockholders to approve the transaction at signing without the need to call a special meeting.

New SEC Guidance Related to Rule 506(c) Verification Requirement

On March 12, 2025, the Staff provided guidance in response to a letter requesting interpretive guidance (the No-Action Letter) to clarify the verification requirement of Rule 506(c) of Regulation D. In addition, on the same day, the Staff published two new C&DIs related to questions surrounding the verification requirement of Rule 506(c). The Staff's guidance from the No-Action Letter and updated C&DIs will likely encourage issuers to raise capital through offerings that use general solicitation and advertising.

Rule 506(c) provides an exemption from registration for securities that are offered and sold by companies to accredited investors in a private placement. Under this rule, an issuer may broadly solicit and generally advertise such an offering that otherwise meets the relevant conditions of Regulation D so long as (1) all purchasers in the offering are accredited investors and (2) the issuer takes reasonable steps to verify that all purchasers are indeed accredited investors.

Key Takeaways:

- **Ability to Rely on Minimum Investment Amounts:** The No Action Letter indicates that the Staff views reliance on certain minimum investment amounts (generally, $200,000 for natural persons or $1 million for legal entities[5]), including pursuant to a

5 For legal entities that are accredited by virtue of having only accredited investors as equity owners, the representations must also include one that each of the purchaser's equity owners has a minimum obligation to the purchaser, including pursuant to a binding commitment to invest in installments, of at least $200,000 for natural persons and $1 million for legal entities. Furthermore, the no-financing representation in this circumstance must also include a representation to the effect that the equity owners' minimum amounts are not so financed.

binding commitment to invest in installments, and written representations from a purchaser as sufficient to fulfill the verification requirement. As a result, an issuer following these procedures could reasonably conclude that it has taken reasonable steps to verify the accredited investor status of such purchasers in a Rule 506(c) offering (and thus comply with the Rule 506(c) verification requirement).

- **Increase in 506(c) Offerings:** The No-Action Letter offers a method for issuers to conduct private placements under Rule 506(c) in a manner that is more efficient for investors and less invasive for purchasers, and the new guidance will likely encourage more issuers to take advantage of the safe harbor provided by Rule 506(c). For example, the streamlined verification process may appeal to private fund sponsors who believe more widespread marketing and publicity efforts will be beneficial to their fundraising process for one reason or another. Despite the welcome guidance, reliance on Rule 506(c) should still be carefully considered by potential issuers in a holistic manner that takes into account competing interests (e.g., other business considerations, ongoing offerings and other jurisdictional requirements, and the effect of any minimum commitment amounts on targeted distribution channels).

For more information regarding the No-Action letter, the updated C&DIs and their potential impacts, please see our client alert.

Updated Guidance Eases Certain Timing Constraints on Non-WKSI Filers and Reduces Duplicative Disclosure on Form 20-F

On March 20, 2025, the Staff published revised C&DIs related to an issuer's ability to have declared effective a non-automatically effective Form S-3 shelf registration statement between the filing of the issuer's Form 10-K and its definitive proxy statement. On the same day, the Staff published C&DI 110.10, which clarifies when a foreign private issuer (FPI) can omit disclosure regarding a change in certifying accountant in its Form 20-F.

Key Takeaways:

- **Non-WKSI Filers Can Have Form S-3 Declared Effective During Gap Period:** Updated C&DIs 114.05 and 198.05 extend to non-WKSI filers the ability to file and have declared effective a non-automatically effective shelf registration statement on Form S-3 during the gap period between the filing of the issuer's Form 10-K and the issuer's filing of its Form 10-K Part III information in its definitive proxy statement. Like their WKSI counterparts filing on an automatically effective Form S-3ASR, non-WKSI filers must ensure that any prospectus used in a registered offering contains the information required to be included by Section 10(a) of the Securities Act and Schedule A thereto. Accordingly, issuers need to assess the completeness of their disclosures during this interim period and determine the materiality of any omitted information, in particular any Part III information to be filed in the upcoming definitive proxy statement. Along with extending C&DI 114.05 and 198.05 to cover non-automatically effective shelf registration statements on Form S-3, the Staff withdrew C&DI 123.01, where the Staff previously stated it would not declare effective a non-automatically effective shelf registration statement on Form S-3 in the gap period unless the issuer had first filed its definitive proxy statement or otherwise included Part III information in its Form 10-K.
- **FPIs Do Not Need to Repeat Change in Certifying Accountant Disclosure:** In new C&DI 110.10, the Staff states that if an FPI disclosed a change in certifying accountant in a Form 6-K, then this disclosure would not need to be repeated in the issuer's Form 20-F. This is because the information would have been "previously reported" within the meaning of Instruction 2 to Form 20-F and Exchange Act Rule 12b-2, even though it is furnished on a Form 6-K rather than filed under the Exchange Act, so long as the prior disclosure meets the requirements of Item 16F(a) of Form 20-F.

The Staff concurrently made certain other changes to the Securities Act and Exchange Act C&DIs, including revising C&DI 117.05 to refer to Securities Act C&DI 114.05 as opposed to withdrawn C&DI 123.01 and withdrawing C&DIs 113.01, 113.02 and 113.03.6

EDGAR Next is Live

As of March 24, 2025, the new EDGAR Filer Management website EDGAR Next is live. Filers can enroll in EDGAR Next, provided that they have the requisite information, and new filers must apply for EDGAR Codes on new Form ID.

Between Monday, March 24, 2025, and Friday, September 12, 2025, existing filers will be able to file according to the current filing process, whether or not they are enrolled in EDGAR Next. As of Monday, September 15, 2025, filers will not be able to make a filing unless they first enroll in EDGAR Next. While the process of enrolling in EDGAR Next can be straightforward, there are certain circumstances that could be time consuming or ultimately require the filer to submit a new Form ID. As of Monday, December 22, 2025, filers will be required to be enrolled in EDGAR Next in order to make a filing, which will only be possible by submitting a Form ID.

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6 C&DIs 113.01, 113.02 and 113.03 related to the share repurchase disclosures of FPIs on Form F-SR, which was vacated with the share repurchase rules in 2023 and are therefore no longer relevant.

The SEC staff requires "sufficient time" to review and approve Form IDs and encourages Form ID applicants to submit a Form ID well in advance of a required filing, which is a minimum of four business days. Since the SEC Staff will likely be inundated with Form IDs during the EDGAR Next transition, particularly in the lead up to and after September 15, 2025, it will likely take a number of days for them to be processed. Accordingly, we recommend companies enroll in EDGAR Next as soon as possible to ensure their uninterrupted ability to file. Furthermore, it is critical that companies work closely with their officers and directors to coordinate these filers' enrollment in EDGAR Next. For assistance with the transition to EDGAR Next, reach out to the Paul Hastings team.

Updated Beneficial Ownership C&DIs

On February 11, 2025, the Staff issued updates related to its C&DIs regarding the filing of beneficial ownership reports on Schedules 13D and 13G. Generally, Sections 13(d) and 13(g) of Exchange Act and the related rules require investors to report their beneficial ownership on Schedule 13D or Schedule 13G if they own more than five percent of a Section 12 registered equity security. Investors that beneficially own more than five percent of a covered class must file a long form Schedule 13D, and certain investors who fit within the exemptions set forth in Rule 13d-1 are eligible to file a short form on Schedule 13G in lieu of the more burdensome Schedule 13D.

Question 103.11 of the C&DIs states that a shareholder's inability to rely on the passive investor exemption from the Hart-Scott-Rodino Act's notification and waiting period due to the shareholder's engagement with the issuer does not preclude the shareholder from using short form Schedule 13G pursuant to Rule 13d-1(b) or Rule 13d-1(c). Instead, the shareholder's ability to file Schedule 13G in lieu of the more burdensome Schedule 13D hinges upon whether the shareholder acquired or is holding the securities with a change of control or influence of control intent, which should be analyzed by taking into account the applicable facts and circumstances. In the revised C&DI, the Staff clarifies that for purposes of the determination, it will look to the definition of "control" set forth in Exchange Act Rule 12b-2.

Furthermore, in new Question 103.12, the Staff revisited its guidance on the types of engagement between a shareholder and management that would necessitate a finding of change of control or influence of control intent, thereby precluding the shareholder from using Schedule 13G. Pursuant to the new C&DI, the Staff guides that both the subject matter of the shareholder's engagement with management as well as the context of the engagement should be taken into account when reviewing the facts and circumstances. As with the Staff's prior guidance, if a shareholder engages with management in connection with seeking the sale of the issuer, a significant disposition of the issuer's assets, the issuer's restructuring or a contested election, such actions would be considered disqualifying. In a departure from the previous guidance, the new C&DI goes on to describe other circumstances where a shareholder implicitly or explicitly using its voting power to pressure management to take certain actions could be considered influencing control over the issuer, rendering Schedule 13G unavailable. These circumstances include recommending that the issuer:

- Discontinue a poison pill plan;
- Eliminate a staggered board;
- Move to a majority voting standard for uncontested director elections;
- Amend executive compensation practices;
- Take specific actions related to social, environmental or political policy; or
- Adopt the shareholder's voting policy on a specific topic.

Shortly following the release of the revised C&DIs, BlackRock and Vanguard temporarily paused shareholder engagements with companies to access the impact of the C&DIs, which have since resumed. Furthermore, the Staff has subsequently informally guided that:

- The publication of voting policies or guidelines is not considered an attempt to influence control of a particular company;
- Investors can still meet and discuss voting policies and guidelines with a company, but Schedule 13G status is at risk the more the discussion becomes specific or insistent or turns into a negotiation (i.e., demanding actions in exchange for votes);
- Company-initiated meetings are less likely to call filer status into question; and
- Both saying "we will vote against a director" and taking other actions suggesting that an investor will vote against a director fall within the C&DI's purview to disallow Schedule 13G filing status.

Updated Guidance on Shareholder Proposals

On February 12, 2025, the Staff released a bulletin providing updated guidance on shareholder proposal requirements under Exchange Act Rule 14a-8 and rescinding its previous guidance set forth in Staff Legal Bulletin No. 14L. New Staff Legal Bulletin No. 14M sets forth the Staff's views on the scope and application of the "economic relevance" and "ordinary business" exclusions as a basis for excluding shareholder proposals from a company's proxy statement. As a result of the Staff's updated interpretation of these exclusions, it may be easier for companies to exclude proposals related to social, ethical or other significant policy issues from their proxy statements.

"Economic Relevance" Exclusion: Rule 14a-8(i)(5) allows a company to exclude shareholder proposals related to issues that are not economically relevant to the company and are not "otherwise significantly related to the company's business." In the past, the Staff has broadly interpreted "otherwise significantly related to the company's business" in the face of significant social or ethical policy issues. Under the new guidance, proposals raising social or ethical issues will be considered significant to the company's business only if they have a significant connection to the company's operations, which will be evaluated on a company-by-company basis rather than on a policy-by-policy basis.

"Ordinary Business" Exclusion: Rule 14a-8(i)(7) allows a company to exclude a shareholder proposal that relates to the company's ordinary business operations, but the Staff recognizes an exception for ordinary business proposals that raise significant policy issues on the grounds that those issues go beyond day-to-day operations. Under the new guidance, whether the significant policy exception applies will depend on whether the policy issue is significant to the individual company, rather than whether it is broadly or universally significant.

M&A Insights

On March 25, 2025, the Delaware General Assembly enacted amendments to the DGCL, which were subsequently signed into law by the governor of Delaware. The DGCL amendments have significant implications for corporations and their stockholders, most specifically with respect to controlling stockholder and interested party transactions under Section 144 of the DGCL and stockholder rights under Section 220 of the DGCL, which governs the inspection of corporate books and records.

Key Takeaways:

- **Reset of Standards Governing Controlling Stockholder and Interested Party Transactions to Provide More Predictability (Section 144):** The DGCL amendments provide a clear framework for controlling stockholder and interested party transactions that create safe harbors so that decisions by independent directors will not be second-guessed and litigation can more easily be dismissed at the pleadings stage. This is a change from the prior jurisprudence regime governing such transactions that became increasingly difficult (and expensive) to comply with in order to obtain pleading stage dismissal.
- **Presumption of Independence for Directors (Section 144):** The DGCL amendments provide a presumption of independence for public company directors that the corporation determines to be independent and that meet the criteria under the applicable stock exchange rules.
- **Refinement of Stockholder Inspection Rights (Section 220):** The revisions clarify and, in some cases, limit the scope of records stockholders can access through a Section 220 demand, reducing administrative burdens and potential misuse of inspection rights.

For a detailed exploration of the DGCL amendments, please see our client alert.

Other Updates

Keep Calm and Carry On: Thoughts on Recent Orders on FCPA Enforcement

What in the world is happening with enforcement of the Foreign Corrupt Practices Act (FCPA)? And what does the recent executive order[7] and DOJ guidance mean for U.S. and global companies? Our view is that it is premature to reach any hard conclusions about exactly what these announcements mean, both in the short- and long-term. Bribery is still illegal — in the United States and around

7 A link to the executive order is here: https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/.

the world. Companies must maintain their compliance commitments — notwithstanding any pause in enforcement by a single enforcement agency. But there could undoubtedly be significant impacts as new guidance is issued and global enforcement trends shift one way or another. We work through some of the related issues in this client alert and try to answer the questions that our global team has received from our clients operating in nearly every country in the world.

Key Takeaways:

- **Companies Currently Before the U.S. Government:** Companies that are currently facing FCPA investigations have not been given a "get out of jail free" card, so to speak. The United States has not "stopped" enforcement of the FCPA, but merely has imposed a pause in DOJ criminal investigations and prosecutions, creating a gap that at least theoretically could be filled by other U.S. or global anti-corruption enforcement agencies.
- **Companies With Internal Investigations:** Companies currently conducting internal investigations of potential corruption, but not yet before the U.S. government, should also not dramatically change their investigative strategy. DOJ can open new cases, and the "pause" does not in any way decriminalize the underlying conduct, particularly given that the statute of limitations on new conduct will extend beyond the current administration.
- **Companies Evaluating Their Anti-Corruption Compliance Programs:** The executive order and the DOJ memo are potentially significant developments that warrant the attention they are receiving in the press and the market. However, at this stage, we do not recommend that clients change their anti-corruption compliance programs, policies, procedures and controls. The underlying legal landscape has not changed, and the enforcement landscape is likely to remain uncertain for at least six months, if not a full year.

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