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SEC Releases Sample Comment Letter on Russian Invasion of Ukraine and Potential Related Disclosure Obligations

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On May 3, 2022, the U.S. Securities and Exchange Commission (the "SEC") issued a Sample Letter to Companies Regarding Disclosures Pertaining to Russia's Invasion of Ukraine and Related Supply Chain Issues (the "Sample Letter").¹ The Sample Letter continues the SEC's recent trend of issuing guidance regarding timely topics via sample comment letter.²

Background

The Russian invasion of Ukraine and resulting international response have led to significant economic disruption, including sanctions, further supply chain disruptions and commodity price spikes, enhanced cybersecurity risks, and interrupted business relationships. In its release of the Sample Letter, the SEC reiterates that companies may have disclosure obligations under the federal securities laws related to the direct or indirect impact that the foregoing has had or may have on their business.

Impact on Disclosure

The SEC urges issuers to provide detailed disclosure, to the extent material or otherwise required, regarding:

- direct or indirect exposure (broadly defined) to Russia, Belarus, or Ukraine;
- direct or indirect reliance on goods or services sourced in Russia or Ukraine, or in countries supportive of Russia;
- actual or potential disruptions in the issuer's supply chain; and
- business relationships, connections to, or assets in Russia, Belarus, or Ukraine.

The SEC also notes potential impacts on financial statements, including, among others, impairment, inventory valuation, tax, disposal or exiting of a business, and ability to collect receivables.

The SEC further advises companies to consider how the invasion and the international response affect management's assessment of the effectiveness of disclosure controls and internal controls over financial reporting, as well as the board of directors' role in risk oversight with respect to these matters, and generally.

The SEC, while noting that the sample comments are not comprehensive, said they should guide registrants as they craft their disclosures in upcoming filings with the SEC.

The Sample Letter

General Comments

The Sample Letter says that the SEC may focus on a registrant's business operations or interactions with Russia, Belarus, and/or Ukraine and inquire as to how the Russian invasion may directly or indirectly impact the registrant's business. Disclosure may be required regarding any impact from sanctions, trouble securing government approvals, currency exchange fluctuations, export or capital controls, and potential future impact of potential nationalizations, and reactions to the registrant's action or inaction in response to the invasion. Additionally, the Sample Letter provides that if a registrant views the impact of the above as nonmaterial, it should be prepared to explain that conclusion.

The Sample Letter further provides that the SEC may inquire as to the board of directors' role in overseeing risks related to the Russian invasion of Ukraine. These risks could be related to "cybersecurity, sanctions, employees based in affected regions, and supply chain/suppliers/service providers in affected regions as well as risks connected with ongoing or halted operations or investments in affected regions."³

Risks Related to Cybersecurity

The Sample Letter makes clear that the SEC expects registrants to provide disclosure, to the extent material, of any new or heightened risk of cyberattacks by state actors, and any actions taken to mitigate those risks.

MD&A

The Sample Letter primarily focuses on comments related to a registrant's MD&A. The comments are broad, but generally inquire as to the impact of the Russian invasion on:

- known trends or uncertainties that may have a material impact on the company's finances;
- critical accounting estimate disclosures;
- import/export of any product or commodity used or sold; and /or
- supply chains.

The Sample Letter asks companies to disclose any steps taken to mitigate and quantify the impact of the Russian invasion on the registrant's business.

Non-GAAP Measures

The Sample Letter inquires as to potential non-GAAP adjustments to add an estimate of lost revenue due to the Russian invasion and/or related supply chain disruptions, indicating that registrants may be asked to explain why any exclusion of expenses from its non-GAAP measures should not be considered normal, recurring operating expenses.

Controls and Procedures

The Sample Letter provides that the SEC may request a registrant to explain how the Russian invasion of Ukraine has impacted its design of disclosure controls and procedures and/or any changes in a

registrant's internal control over financial reporting due to Russia's invasion of Ukraine and/or supply chain disruptions. Relatedly, the SEC may ask a registrant to disclose how any changes to its controls and procedures have impacted its determination of the effectiveness of those controls.

Conclusion

As registrants prepare for upcoming periodic filings or contemplate disclosure updates in the context of securities offerings, they should anticipate that the SEC will expect detailed disclosure on the impact on their business of the Russian invasion of Ukraine, including but not limited to supply chain disruptions, and should be prepared to draft such disclosure with a view towards pre-empting, or if necessary addressing, any such comments.

There has already been an uptick in public company disclosure regarding the impact of the Russian invasion of Ukraine on registrants' businesses, including supply chain disruptions. Recent annual reports primarily addressed the conflict in the Risk Factor section, while there is a trend in more recent quarterly filings to also include discussion in the MD&A section. The Sample Letter also points to additional areas that may require disclosure, and registrants may need to broaden their discussion of the crisis in their next periodic disclosure filing to ensure that they meet the expectations highlighted in the Sample Letter.

We are carefully tracking the SEC's updates on this matter, including on public company disclosure obligations. To the extent you have questions on the impact of the Sample Letter or the SEC's approach, please contact us. The full text of the Sample Letter is accessible [here](#).

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If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings lawyers:

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¹ Sample Letter to Companies Regarding Disclosures Pertaining to Russia's Invasion of Ukraine and Related Supply Chain Issues, (May 3, 2022) https://www.sec.gov/corpfin/sample-letter-companies-pertaining-to-ukraine?utm_medium=email&utm_source=qovdelivery#_ftn1.

² See Sample Letter to Companies Regarding Securities Offerings During Times of Extreme Price Volatility, (Feb. 8, 2021) <https://www.sec.gov/corpfin/sample-letter-securities-offerings-during-extreme-price-volatility>; Sample Letter to Companies Regarding Climate Change Disclosures, (Sept. 22, 2021) <https://www.sec.gov/corpfin/sample-letter-climate-change-disclosures>; Sample Letter to China-Based Companies, (Dec. 20, 2021) <https://www.sec.gov/corpfin/sample-letter-china-based-companies>.

³ Sample Letter to Companies Regarding Disclosures Pertaining to Russia's Invasion of Ukraine and Related Supply Chain Issues, (May 3, 2022) https://www.sec.gov/corpfin/sample-letter-companies-pertaining-to-ukraine?utm_medium=email&utm_source=qovdelivery#_ftn1.

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