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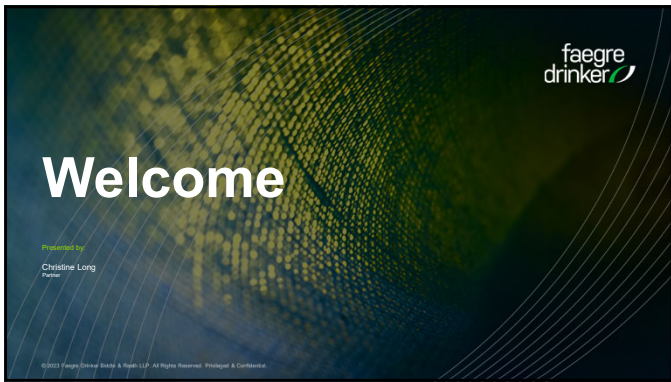
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- Private Client
- Product Liability & Mass Torts
- Real Estate & Construction

**5 Industry Focuses**

- Consumer Products & Retail
- Financial Services
- Food & Agribusiness
- Health & Life Sciences
- Insurance

**7 Core Values**

- Integrity
- Excellence
- Diversity & Inclusion
- Shared Commitment
- Teamwork & Collaboration
- Mutual Respect
- Service to Others

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## A BUSY SEC

- 12 Proposed rulemakings on near-term agenda:
  - Proposed rules on earnings releases/quarterly reports
  - Proposed rules on clawbacks
  - Proposed rules modernizing MD&A, Selected Financial Data and Supplementary Financial Information disclosures
  - Proposed rules modernizing Business, Legal Proceedings and Risk Factors disclosures
  - Proposed rules regulating proxy advisors
  - Amendments to Rule 14a-8 regarding shareholder proposals
  - Amendments to auditor independence rules

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#11

### Virtual Meetings

- Virtual-only meetings **declined** slightly in 2022
  - Some meetings returned to in-person
- Expect more **in-person meetings** in 2023
- Hybrid** continues to be viewed as worst of all options
- Virtual platforms** enhanced
  - Provide livestream of audio and video
  - Provide authentication of attendees
  - Permit shareholder interaction for Q&A

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#10

### SWOP is Back!

... and the answer is easy ...

## ANNUAL!



- 2011 → 2017 → 2023
- Was *your* last Say on Pay Frequency proposal six years ago?
- Proxy cards generally must state "1 Year" (not "One Year" or "Annual")
- Remember to make a final frequency decision and report it in the Form 8-K with voting results

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#9

### Human Capital Management Disclosures

**Most popular topics:**  
Talent development, compensation and benefits, health and safety, commitment to DEI, pandemic measures, employee engagement, employee geography, leadership development, employee resource groups

**Biggest trends compared to 2021:**  
Increased diversity breakdown disclosures, increased employee geography disclosures, increased turnover disclosures

**Most likely areas for SEC rulemaking:**  
Turnover data, skills and development training, compensation/benefits and workforce demographics



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#8

### EDGAR & XBRL Updates

- Glossy Annual Reports**
  - Current rule: Must post any 14a-3 "glossy" annual report on corporate website
  - Effective January 11, 2023: Must submit any 14a-3 "glossy" annual report on EDGAR (as PDF)
- Forms 144**
  - Current rule: Form 144 can be filed in paper and mailed or emailed to SEC
  - Effective April 23, 2023: Must file Form 144 on EDGAR (no requirement to send to stock exchange)
- Form 11-Ks**
  - Current rule: Can file Form 11-K in paper, although most file on EDGAR already
  - Effective January 22, 2023: Must file Form 11-K on EDGAR
  - Effective July 11, 2025: Must tag Form 11-K financial statements in XBRL

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#7

### Comment Letters: Board Risk Oversight & Leadership Disclosure

- SEC Staff has sent some futures comment letters to some companies encouraging more tailored, less boilerplate, disclosure
- Two topics:
  - Board leadership structures
  - Board oversight of risk and role of independent board leadership
- Focus on "why" your structure is right for your company

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#6

### Dear Issuer: Russia/Ukraine \* Supply Chain Issues

- Exposure to affected areas through operations, employees, investments, sanctions, or legal/regulatory uncertainty
- Direct or indirect reliance on good/services
- Actual or potential disruptions in supply chain
- Business relationships with and assets in affected areas
- Board oversight of risks
- New/heightedened risk of cyberattacks
- Known trends/uncertainties
- Critical accounting estimates
- Non-GAAP adjustments

"We note your adjustment to add an estimate of lost revenue due to [Russia's invasion of Ukraine and/or supply chain disruptions]. Recognizing revenue that was not earned during the period presented results in the use of an individually tailored revenue recognition and measurement method which may not be in accordance with Rule 100(b) of Regulation G. Please remove these adjustments. Refer to Question 100.04 of the Division's C&ED for Non-GAAP Financial Measures."

CorpFin Sample Letter to Companies, May 2022, available at <https://www.sec.gov/corpfin/sample-letter-companies-pertaining-to-ukraine>.

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#2

**Courtesy Copies: Thanks, but no thanks!**

SEC requests that paper “courtesy copies” **not** be sent unless specifically requested by Staff.



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#1

**Proxy Prep: Checklist of Things to do Now!**

- **Pay Ratio:** Need new median employee?
- **Section 16:** Any late filings?
- **Exhibits:** Review Description of Capital Stock and Registration Statements for Auditors Consent
- **New Directors:** Identify source of candidate
- **Equity Plan Proposals:** Any plans expiring, need more shares, extensions?
- **Director Attendance:** Check meeting attendance to date
- **Pay for Performance Disclosure:** Start preparing for new disclosure...

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Navigating the 2023 Annual Report and Proxy Season

**In Other News ....  
(What happened since November?)**

Presented by  
Janette Blankenship  
Partner

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**Russell 3000 Board Diversity Disclosure Initiative**  
(November 15)

- Letter campaign calling for increased board diversity disclosure
- Russell 3000 companies
  - 13% - exemplary disclosure
    - Diversity information by director
  - 63% - partial disclosure
    - Aggregated diversity disclosure
  - 24% - no disclosure

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**AT&T's Reg FD Settlement**  
(December 5)

- AT&T settled by paying \$6.25 million, and three IR executives each paid \$25,000
- AT&T missed quarterly revenue estimates for two quarters and was concerned about missing estimates for a third quarter
- CFO instructed IR team to make calls to "work the analysts who still have equipment revenue too high"
  - IR team made about 20 calls to analysts
  - Allegedly disclosed smartphone sales data (equipment data and upgrade rates), even though internal documents suggested this information was "material"
- Analysts substantially reduced their revenue forecasts, leading to consensus revenue just below the level AT&T eventually reported

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**SEC Universal Proxy C&Ds**  
(December 6)

SEC issued universal proxy C&Ds

- Company does not include dissident nominees on proxy card if it determines shareholder **failed to comply** with advance notice bylaws
- If shareholder **initiates litigation** to dispute exclusion, the company must disclose that it determined nominations to be invalid and a description of the basis for the conclusion and potential implications if they were valid (company would need to re-solicit)
- Dissidents must use their **own proxy card**

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**UPC – Early Returns**

**AIMCO Proxy Fight – December 16**

- L&B nominated two candidates for three seats
- ISS recommend in favor of one L&B nominee and to vote on the L&B proxy card
- Shareholders elected one L&B nominee and two company nominees

**Argo Proxy Fight – Withdrawn earlier**

- CRM nominated two candidates for seven seats
- ISS and GL recommend for the company's nominees; CRM withdrew nominations

**Aim ImmunoTech Proxy Fight – Found invalid**

- DE courts found dissident did not comply with advance notice bylaws

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**Non-GAAP C&DIs (December 13)**

- SEC issued new and revised C&DIs
  - Certain adjustments misleading under Reg G –
    - Excluding normal cash operating expenses that occur repeatedly or occasionally (including at irregular intervals) may be misleading; analysis depends on company's business
  - Individually tailored accounting principles (revenue recognition) - may be misleading
  - Inadequate labelling – may be misleading
    - Failure to identify and describe as non-GAAP
    - Presenting measures with label that does not reflect actual nature of measure
  - Greater or equal prominence rules applies to:
    - Ratios, charts/graphs, discussion and analysis
- SEC continues to issue many comment letters on non-GAAP compliance

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**Nasdaq Board Diversity Rules: Amended Compliance Dates (December 14)**

NASDAQ RULE	Initial Matrix	1 Diverse Director	2 Diverse Directors
Nasdaq Global Select/Global Market			December 31, 2025
Nasdaq Capital Market	December 31, 2022	December 31, 2023	December 31, 2026
Boards with 5 or fewer directors			N/A

**Year Two Reminder:**

- Matrix must disclose for current year + prior year
- Requirement to disclose prior year is considered satisfied if matrix for the prior year is publicly available (such as in a filed proxy statement, or if still posted on the company's website)

**If Post on Website:**

- Can satisfy requirement by submitting URL to [drivingdiversity@nasdaq.com](mailto:drivingdiversity@nasdaq.com)

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**Rule 10b5-1(c) Amendments**

Applies to Section 16 officers

**Requires Cooling Off Period Before 1<sup>st</sup> Trade**

- **Officers and directors** – expires later of:
  - 90 days after adoption
  - Two business days following disclosure of financial results in **10-K** or **10-Q** for the quarter in which the plan was adopted
  - And, in no event more than 120 days after adoption
- **Persons other than D&Os and issuers:**
  - Expires 30 days after adoption
- No cooling off period required for issuers
- No financial hardship exemption
- Applies to certain modifications
  - Change to amount, price or timing (or formula impacting the foregoing)

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**Rule 10b5-1(c) Amendments**

- **Prohibit Overlapping Plans by All Non-Issuers**
  - Cannot have multiple plans in place
    - Series of separate contracts with different B-Ds can be treated as a single "plan"
    - May have one later-commencing plan under which trading not authorized to commence until current plan is completed/expired
    - Exemption for plans for sell-to-cover transactions to satisfy tax withholding obligations upon vesting
- **Limit Single-Trade Plans by All Non-Issuers**
  - Only one plan designed to effect transaction in a single trade in any 12-month period
    - Exemption for plans for sell-to-cover upon vesting

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**Rule 10b5-1(c) Amendments**

**D&O Certification** – include certification in plan:

- Not aware of MNPI (personal determination)
- Adopting in good faith and not as part of a plan or scheme to evade Rule 10b-5

**Amended Good Faith Condition**

- Must act in good faith "with respect to the contract, instruction or plan" (expands good faith requirement currently applicable to adopting the plan)
  - Must be "operated" in good faith during life of the plan
  - This is the only new condition that applies to issuers as well

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**Guidance on Gifts**

SEC commentary in release states:  
 “a donor of securities violates Section 10(b) if the donor gifts a security of an issuer in fraudulent breach of a duty of trust and confidence when the donor was aware of material nonpublic information about the security or issuer, and knew or was reckless in not knowing that the donee would sell the securities prior to the disclosure of such information.”

- Revisit policies on gifting in insider trading policy (or absence thereof)
- Particularly relevant to year-end charitable gifts/contributions
  - Although, SEC noted 10b5-1(c) is available for a *bona fide* gift

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**Option/SAR Grants Describe policies**

New Item 402(x) requires annual disclosure in 10-K/proxy of policies and practices on timing of awards of stock options/SARs in relation to disclosure of MNPI

- How board determines when to grant such awards (such as on a predetermined schedule)
- Whether (and if so, how) the board/comp committee takes MNPI into account when determining timing and terms of awards
- Whether company has timed disclosure of MNPI for the purpose of affecting the value of compensation

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**Options/SAR Grants Table**

Disclose tabular information if during the last year:

- Options/SARs granted to NEOs
- During period beginning 4 business days before and ending 1 business day after
- Filing of 10-K, 10-Q or 8-K announcing MNPI
  - Other than Item 5.02 8-K disclosing material option grant

Name	Grant date	Number of securities underlying the award	Exercise price of the award (\$/sh)	Grant date fair value of the award	Percentage change in the closing market price of the securities underlying the award between the trading day ending immediately prior to the disclosure of material nonpublic information and the trading day beginning immediately following the disclosure of material nonpublic information
(i)	(ii)	(iii)	(iv)	(v)	(vi)
PEO					
PEO					
A					
B					
C					

Disclosure must be iXBRL tagged

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#6  
Director Bio



**Ted Sarandos**  
CO-CHIEF EXECUTIVE OFFICER AND CHIEF CONTENT OFFICER OF THE COMPANY

**Why this director is valuable to Netflix**  
Mr. Sarandos as Co-Chief Executive Officer and Chief Content Officer, is integral to developing corporate strategy and oversees the teams responsible for the acquisition, creation and production of best content including original series from across the world. His ability to identify talent before the experience in the entertainment industry provide a unique business perspective to the Board.

**Background**  
Mr. Sarandos has been responsible for all content operations since 2000, and led the Company's transition to original content production that began in 2013 with the launch of series such as House of Cards, Arrested Development and Orange Is the New Black, with more than 20 years' experience in home entertainment. He is recognized in the industry as an innovator in film acquisition and distribution and was named one of Time Magazine's 100 Most Influential People in 2013. He is a Henry Crown Fellow at the Aspen Institute and serves on the Board of Directors of The Arts, Education Foundation for the Arts. Mr. Sarandos also serves on the Film Advisory Board for the Tribeca and Los Angeles Film Festivals, is an Artist-in-Residence board member, an Executive Committee Member of the Academy of Television Arts & Sciences and is a trustee of the American Film Institute.

**Career Snapshot**  
• Co-Chief Executive Officer (since July 2020) and Chief Content Officer of Netflix (since 2000)  
• Executive in video distributor ETO and Video City/West Coast video, a video rental retail chain  
• Producer/Executive Producer for award-winning and critically acclaimed documentaries and independent films including Ind Emory-nominated Damage and Tony Bennett: The Music Never Ends

**Other Public Company Boards**  
• Spotify Technology S.A.

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SACI

Highlight ESG Experience



**Thomas W. Schowee**  
President/Executive Vice President of ESG, Wal-Mart Stores, Inc.

**Spotlight on ESG Expertise** Mr. Schowee developed social expertise - in particular, supply chain management - during his tenure as CFO at Black & Decker and Wal-Mart and currently as a member of the Audit Committee Leadership Network. In his current capacity, he leverages his training to advocate for improved performance of audit committees and more rigorous controls of ESG disclosures. GM benefits from Mr. Schowee's experience as we continue our efforts to provide comprehensive and meaningful ESG disclosures.

**Background** Mr. Schowee developed social expertise in a variety of ways over his 20-year career. He served as CFO of Black & Decker and Wal-Mart and currently as a member of the Audit Committee Leadership Network. In addition, he has worked for the U.S. Environmental Protection Agency, the U.S. Department of Justice, and the U.S. Department of Energy. He has also worked for the U.S. Environmental Protection Agency, the U.S. Department of Justice, and the U.S. Department of Energy. He has also worked for the U.S. Environmental Protection Agency, the U.S. Department of Justice, and the U.S. Department of Energy.

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Highlight Director Leader Responsibilities

**Our Board leadership structure**  
Our Board's overall leadership structure may change over time to reflect our company's evolving needs, strategy, and operating environment. Changes to our Board's composition and leadership needs, and other factors, including the perspectives of shareholders and other stakeholders, in accordance with 2021 amendments to our Bylaws, that are adopted by our shareholders in a duly called meeting shall be the sole authority for the Board's ability to determine the Board leadership structure from time to time, and any amendments to our Bylaws and our Board Charter shall be subject to the approval of our shareholders.

**Highly engaged Lead Independent Director**  
The formation of a subset of the Lead Independent Director does not fully capture Mr. Board's actual role as our Board's independent leader. Among other things, Mr. Board:

- Holds bi-monthly calls with our primary bank regulators to discuss any issues of concern
- Regularly speaks with our CEO and holds calls at least monthly to discuss Board meeting agendas and discuss topics, objectives, and other related topics of management concern
- Meets at least quarterly with management members, including our CEO, our Chief Risk Officer, our Chief of Compliance and Operational Risk, and our Chief Human Resources Officer
- Plays a leading role in shareholder engagement process, representing our Board and independent director to answer inquiries and providing information from those inquiries to our Board

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## Slide 62

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**SAC1** Graphics team - the paragraph on the right is a blown up version of the bottom paragraph on the left - is there a way to demonstrate that

Seidel, Amy C., 1/6/2023











## Slide 74

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**SAC2** Graphics team - can you then make the picture of the video on the left become active so that we can plan about 30 seconds of it? It is available here:

Seidel, Amy C., 1/6/2023

**SAC3** <https://investor.hp.com/governance/board-of-directors/default.asp>

Seidel, Amy C., 1/6/2023



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## Flurry of SEC Rulemaking

TOPIC	STATUS	KEY DATES
Universal Proxy	Final Rule / Effective	Effective 9/1/22
Pay for Performance Disclosure	Final Rule	Effective for FYs ending after 12/16/22
Clawback Rules	Final Rule	Stock exchanges have until 2/27/23 to issue final implementing rules; rules to be effective no later than 11/27/23
Rule 10b5-1 and Insider Trading	Final Rule	Effective 2/27/23; compliance dates generally tied to 4/1/23
Climate Change Disclosure	Proposed Rule	Final rules expected April 2023
Share Repurchases	Proposed Rule	Final rules expected April 2023
Cybersecurity Risk Disclosure	Proposed Rule	Final rules expected April 2023
Human Capital Management Disclosure Enhancements	Expected Rulemaking	Proposed rule expected April 2023
Corporate Board Diversity	Expected Rulemaking	Proposed rule expected October 2023

\*Expected\* dates are based on latest SEC RegFlex agenda, but actual dates are entirely uncertain; actual dates frequently vary significantly from expectations

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## The World According to the SEC: Fact Sheets

### 1017007 - Pay Versus Performance

The Securities and Exchange Commission adopted final rules concerning the pay-versus-performance relationship, including changes to the disclosure and clawback requirements. The rules will require companies to disclose, in proxy or information statement, in which reports, the compensation committee's process for developing compensation policies and the disclosure of the financial performance of the registrant over the two fiscal years of the registrant.

**Background**  
The rules are effective as of the beginning of the registrant's fiscal year. The rules apply to all registrants that are required to file proxy or information statements with the SEC. The rules apply to all registrants that are required to file proxy or information statements with the SEC. The rules apply to all registrants that are required to file proxy or information statements with the SEC.

**What's Required**  
The rules are effective as of the beginning of the registrant's fiscal year. The rules apply to all registrants that are required to file proxy or information statements with the SEC. The rules apply to all registrants that are required to file proxy or information statements with the SEC.

### 1017007 - The Rulemaking Process

The rulemaking process involves the following steps: (1) identification of a problem; (2) research and analysis; (3) proposal of a rule; (4) public comment; (5) final rulemaking. The process is designed to ensure that the Commission's actions are based on a thorough understanding of the issues and the views of the public.

**What's Required**  
The rulemaking process involves the following steps: (1) identification of a problem; (2) research and analysis; (3) proposal of a rule; (4) public comment; (5) final rulemaking. The process is designed to ensure that the Commission's actions are based on a thorough understanding of the issues and the views of the public.

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**The World According to the SEC: Office Hours with Gary Gensler**

Office Hours with Gary Gensler

- Cybersecurity & Cyber Hygiene in the Financial Sector | Office Hours with Gary Gensler
- Use Caution with Celebrity Endorsements of Investment Products | Office Hours with Gary Gensler
- What is Short Selling? | Office Hours with Gary Gensler
- What Did the Sarbanes-Oxley Act do? | Office Hours with Gary Gensler
- What Are Digital Trading Platforms? | Office Hours with Gary Gensler
- The U.S. Treasury Markets Explained | Office Hours with Gary Gensler
- Why Does the SEC Take Time When Developing Public Policies? | Office Hours with Gary Gensler
- Investment Professionals & Investor Protection | Office Hours with Gary Gensler

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**Climate Change Disclosure**  
(Proposed rule)

**Requires companies to make disclosure regarding climate change matters, including:**

- Risks, strategy, governance and risk management
- GHG emissions metrics (Scope 1 and 2, and for some Scope 3)
- Targets and transition plans
- Disclosure in financial statements

**Take-Aways:**

- Highly controversial rulemaking; will likely be challenged through litigation
- Consider conducting "gap" analysis to compare current state to proposed rules

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**Share Repurchases**  
(Proposed rule)

**Requires reporting of share repurchase data on new Form SR no later than first business day after purchase, and enhances disclosure requirements about share repurchase program**

**Take-Aways:**

- May result in speculation about day-to-day decisions by issuer in effecting repurchases
  - Why isn't company buying back shares when price seems low? Does it imply that there is some material information?
- Additional compliance requirements and costs
- Additional disclosure unlikely to add much as most companies have same reason for repurchasing stock (tax efficient way to return capital to shareholders and offset dilution, especially when shares are undervalued)
- Note also the 1% excise tax on repurchases under Inflation Reduction Act of 2022

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**Cybersecurity**  
(Proposed rule)

**Requires:**

- Reporting of material cyber incidents on Form 8-K within 4 business days of determination such event has occurred, and then periodic updates
- Requires periodic disclosure of risk and governance matters, including board of directors' cyber expertise

**Take-Aways:**

- Proposed rule does not permit flexibility for timing of disclosure of incident even when law enforcement would not support disclosure at that time
- Places a focus on company/board process for identifying and analyzing cyber incidents
- Concerns about suggesting boards need a "cyber" expert director

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**Additional Proposed Rulemakings on the Horizon**

- **Enhanced Human Capital Management Disclosure**
  - Likely to require additional quantitative disclosure about matters such as workforce demographics, turnover data, skills and development training, compensation/benefits
- **Board Diversity Disclosure**
  - May require disclosure about diversity demographics of board members (similar to existing Nasdaq requirement)

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