# 2025 International Capital Markets Outlook

**January 6, 2025**

Global capital markets navigated a volatile environment in 2024, including significant political developments and falling inflation and interest rates, to produce a meaningful uptick in activity in both debt and equity markets. In the United Kingdom and Europe, 2024 saw an increase in high-yield acquisition financings and refinancings across sectors,[1] whereas public equity transactions (including listings, offerings and investments) were in demand globally.[2]

While market conditions, particularly for initial public offerings ("IPOs"), are generally expected to continue to improve into 2025, investors and issuers must address a range of evolving legal and regulatory obstacles in order take full advantage of improved market conditions. In addition, a mix of new rules and transaction innovations introduce both optionality and uncertainty.

In this Debevoise In Depth, we provide an outlook on the key regulatory developments anticipated to impact international capital markets in the coming year, with a focus on those impacting the U.S. market for foreign private issuers[3] ("FPIs"), the United Kingdom and the European Union.

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[1] See, for example, *Debevoise Advises MFG in Various Financing Arrangements of its Acquisition of Morrisons Petrol Forecourts* (April 30, 2024), *Debevoise Advised Mobilux in €250 Million Senior Secured Notes Offering and Concurrent Upsize of a Revolving Credit Facility* (June 17, 2024) and *Debevoise Advises B&M in its £250 Million Senior Secured Notes Offering* (November 27, 2024).

[2] See, for example, *Debevoise Advises Kaspi.kz in Its $1 Billion U.S. IPO* (January 23, 2024), *Debevoise Advised CD&R in Its $434 Million Secondary Public Offering of Beacon Roofing Supply Common Stock* (January 23, 2024), *Debevoise Advises Perenco in its Investment in Golar LNG* (June 17, 2024) and *Debevoise Advises Employee Shareholders in The Sale of 334,750 Colt CZ Group Shares* (August 2, 2024).

[3] For U.S. securities law purposes, a "foreign private issuer" is an issuer that has 50% or less of its outstanding voting securities held directly or indirectly by U.S. residents, or, if more than 50% of its outstanding voting securities are held directly or indirectly by U.S. residents, (i) less than a majority of its executive officers or directors are U.S. citizens or residents, (ii) 50% or less of the issuer's assets are located in the United States, and (iii) the issuer's business is administered principally outside of the United States.

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# U.S. DEVELOPMENTS

## Disclosures

### Form 20-F

FPIs registered with the U.S. Securities and Exchange Commission (the "SEC") are required to file annual reports on Form 20-F, which are due by April 30, 2025 (for issuers with a December 31 fiscal year end).[4] New disclosure requirements for the upcoming Form 20-F reporting season include those relating to insider trading policies (as discussed under "*Insider Trading Policy*" below) and cybersecurity risk management programs (as discussed under "*Cybersecurity*" below). FPIs are also now subject to XBRL tagging requirements for Item 16K of Form 20-F.

### Insider Trading Policy

Beginning with the annual report on Form 20-F for 2024, FPIs will be subject to new disclosure requirements relating to insider trading policies and procedures. First, any insider trading policy adopted by an FPI will need to be filed as an exhibit to Form 20-F. This requirement may alternatively be met if the FPI's insider trading policies are

[4] The current Form 20-F is accessible here.

contained in its code of ethics, and the code of ethics is filed as an exhibit to the Form 20-F.

In addition, new Item 16J of Form 20-F will require FPIs to disclose whether they have adopted insider trading policies and procedures governing trading in the issuer's securities by employees, officers and directors, or by the issuer itself, that are reasonably designed to promote compliance with insider trading laws, rules and regulations and any applicable listing standards. FPIs that have not adopted such policies and procedures must explain why they have not done so. We recommend that FPIs review their insider trading policies in light of the new disclosure requirements and consider updates and refinements to their insider trading policies if necessary.

### Cybersecurity

On September 5, 2023, the SEC rules on cybersecurity risk management, strategy, governance and incident disclosure became effective.[5] The rules introduced three new types of disclosure requirements relating to material cybersecurity incidents, cybersecurity risk management processes and cybersecurity management and governance. The amended rules require FPIs to disclose on Form 6-K material cybersecurity incidents that they disclose or otherwise publicize in a foreign jurisdiction, to any stock exchange or to security holders promptly after the information is made public. FPIs must also now make several disclosures related to cybersecurity risk management programs in Item 16K of their annual report on Form 20-F, including whether and how they assess, identify and manage material cybersecurity risks; whether they engage any third parties, auditors or consultants in such processes; and whether they have processes in place to oversee and identify third-party risk. In addition, FPIs are required to describe the board of directors' oversight of, and management's role in assessing and managing, risks posed by cybersecurity threats in their Form 20-F.

The SEC also focused on cybersecurity disclosures in its enforcement program. On October 22, 2024, the SEC announced settled charges in separate actions against four technology companies—Avaya Holdings Corp., Check Point Software Technologies Ltd., Mimecast Limited and Unisys Corp.—that were downstream victims of the 2020 SUNBURST and SolarWinds cyberattacks believed to be orchestrated by state-sponsored hackers in Russia.[6] The SEC alleged that each company negligently made materially misleading cybersecurity-related statements or omissions relating to the attacks in violation of Sections 17(a)(2) and 17(a)(3) of the U.S. Securities Act of 1933, as amended (the "Securities Act"), as well as the various rules thereunder, and assessed civil penalties of between $990,000 and $4 million. In connection with the settled charges, Jorge G. Tenreiro, Acting Chief of the SEC's Crypto Assets and Cyber Unit,

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[5] Refer to the Debevoise Update dated July 27, 2023 (accessible here).

[6] Refer to the Debevoise In Depth dated October 28, 2024 (accessible here).

noted that "*[d]ownplaying the extent of a material cybersecurity breach is a bad strategy. In two of these cases, the relevant cybersecurity risk factors were framed hypothetically or generically when the companies knew the warned of risks had already materialized. The federal securities laws prohibit half-truths, and there is no exception for statements in risk-factor disclosures.*" These actions represent the SEC's first decisions based on its multi-year investigation into the adequacy and accuracy of disclosures from downstream victims of the attack.

**Artificial Intelligence ("AI")**

In 2024, the SEC demonstrated its willingness to use existing federal securities laws to bring AI-related cases. On October 10, 2024, the SEC announced settled charges against Rimar Capital USA, Inc. ("Rimar USA"), Rimar Capital, LLC ("Rimar LLC"), Itai Liptz (owner and CEO of Rimar LLC and Rimar USA) and Clifford Boro (Rimar USA board member) for securities law violations in connection with materially false and misleading statements made to investors regarding Rimar LLC's use of AI to perform automated trading for advisory clients.[7] According to the SEC's order, Liptz and Boro made numerous misrepresentations in pitch decks, online posts in a member-only investment group and emails with claims about Rimar LLC's technological operations, including that Rimar LLC had an extensive infrastructure of coders and data-processing capabilities. In fact, such infrastructure and capabilities belonged to overseas entities in which neither Rimar USA nor Rimar LLC had any ownership interest. Moreover, numerous marketing materials and solicitation communications repeatedly referred to Rimar LLC as having an AI-driven platform for trading stocks and crypto assets, among other products, despite Rimar LLC having no such trading application. The settlement follows the SEC's earlier AI-related fraud cases in 2024 against two investment advisers, Delphia (USA) Inc. and Global Predictions Inc., and against the founder and CEO of tech startup Joonko Diversity, Inc.

In 2025, FPIs should prepare for continued SEC scrutiny in connection with their AI-related disclosures, policies and procedures. We expect the SEC to continue to focus on "AI-washing," which is generally defined as the making of unsubstantiated or hyperbolic AI disclosures. FPIs adding disclosure about their use of AI to annual reports or offering materials should ensure that sufficient support exists for all statements. As AI continues to develop and companies consider expanding their use of AI, it will be critical to ensure that oversight of those uses, the associated risks and related disclosures keeps pace. In light of the SEC's focus on AI, FPIs should also review any existing disclosures and other public statements regarding their use of AI to ensure accuracy.

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[7] Refer to the Debevoise Update dated October 11, 2024 (accessible here).

### Climate

In 2024, the SEC continued its efforts to clamp down on "greenwashing." For example, on September 10, 2024, the SEC announced settled charges against a beverages and consumer products company for making inaccurate statements regarding the recyclability of its single-use beverage products.

Going forward, climate-related disclosures are expected to be less of a focus of the SEC, however. On April 4, 2024, the SEC stayed implementation of its climate-related disclosure rules—the Enhancement and Standardization of Climate-Related Disclosures for Investors—pending judicial review in the Eighth Circuit.[8] The future and ultimate scope of the rule and timeline for its implementation remain uncertain, particularly in light of the incoming administration. In addition, on September 12, 2024, an SEC spokesperson confirmed that the SEC's Enforcement Division's Climate and Environmental, Social and Governance ("ESG") Task Force (the "Task Force") had been disbanded. The Task Force was established in March 2021 in response to increasing focus on climate- and ESG-related disclosure and investments. Its primary focus was to identify any material omissions or misstatements in issuers' disclosure related to climate and ESG matters. The Task Force evaluated and pursued complaints, referrals and whistleblower information on ESG-related issues.

Nevertheless, it remains important for companies to review their existing climate-related disclosures and ensure appropriate support exists for any climate-related statements they make, as well as consistency with any sustainability reports or other climate-related statements they publish. In multiple comment letters to companies relating to climate-related disclosures, the SEC has consistently rejected conclusory statements regarding materiality, instead requiring registrants to provide the SEC with detailed analysis regarding how materiality determinations were made.

### Expiring Confidential Treatment Orders

On January 8, 2024, the SEC Division of Corporation Finance updated the guidance on confidential treatment applications and confidential treatment order extensions made pursuant to Rule 406 under the Securities Act and Rule 24b-2 under the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"),[9] which sets out the options available to companies that have confidential treatment orders that are about to expire. There are three alternatives, depending on whether the confidential treatment order was initially granted more or less than three years ago: companies may refile an unredacted exhibit, request an extension or transition to the streamlined process that was created by the SEC in 2019.

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8 Refer to the Debevoise Debrief dated April 5, 2024 (accessible here).

9 Refer to the Debevoise Debrief dated January 26, 2024 (accessible here).

The SEC anticipates most companies will choose to transition to the streamlined process, which allows companies to file redacted exhibits without submitting a confidential treatment request and submitting an unredacted copy of the document to the SEC, provided that the company customarily treats the redacted information as confidential, and the omitted information is not material. Companies that have historically filed confidential treatment applications pursuant to Rule 406 under the Securities Act and Rule 24b-2 under the Exchange Act should consider utilizing the SEC's streamlined process in 2025 if appropriate, considering their circumstances.

#### "Pure Omissions" Are Not Actionable Under Rule 10b-5(b)

On April 12, 2024, the U.S. Supreme Court handed down its decision in *Macquarie Infrastructure Corp. v. Moab Partner, L.P.*, confirming that a failure to make disclosure that is responsive to a disclosure requirement, standing alone, does not give rise to a private right of action under Rule 10b-5(b) under the Exchange Act.[10] The case related to disclosure contained in Macquarie's management's discussion and analysis of financial condition and results of operations (or "MD&A"), but the decision has reach beyond such section, standing for the broader principle that Rule 10b-5(b) does not support pure omissions claims as a basis for a private right of action.

Although the U.S. Supreme Court declined to expand the scope of the private right of action under Rule 10b-5(b), FPIs are also subject to SEC review and enforcement action regarding omissions in required disclosures in their Forms 20-F and should therefore carefully monitor their disclosures. Moreover, the U.S. Supreme Court's decision does not foreclose plaintiffs from filing claims under a "half-truths" theory (*i.e.*, that the information omitted from the MD&A renders other statements made in a filing misleading). In addition, pure omissions theories remain viable under Section 11 of the Securities Act.

### Adding a U.S. Dual Listing

In 2024, multiple companies continued to strongly consider adding a U.S. listing alongside (or in lieu of) their primary, non-U.S. listing, citing greater liquidity and a deeper investor base in the United States. The manner and complexity of these moves are driven by a variety of factors, including the issuer's country of incorporation and the issuer's existing exchange listing, and therefore require careful coordination with regulators, exchanges and clearing systems.

One path to a U.S. listing for a non-U.S.-listed public company is an "upgrade" of an existing Regulation S global depositary receipt ("GDR") program into an American depositary receipt ("ADR") program. ADRs can either trade "over the counter" in the United States (Level I ADR programs) or be listed on a U.S. exchange (Level II or

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[10] Refer to the Debevoise Update dated April 12, 2024 (accessible here).

Level III ADR programs, respectively, depending on whether the ADRs were issued in a capital raising in the United States). The "upgrade" entails certain technical changes to the deposit agreement and typically requires no action on the part of existing Regulation S GDR holders. While an "upgrade" into ADRs is not available for Rule 144A GDRs, Rule 144A GDR holders may be able to transfer into a Regulation S GDR program, subject to the satisfaction of certain requirements. For companies looking to list ADRs on either the New York Stock Exchange or Nasdaq, the underlying securities (such as common stock or ordinary shares) must be registered on a Form F-1 or Form 20-F with the SEC (with the ADRs registered on Form F-6). During the registration process, it will be important to have an effective and collaborative relationship with the SEC, the U.S. stock exchange, the depositary bank and its legal advisors, and the underwriters (and their counsel) to the extent an offering is involved in connection with the move.

A company that is considering a U.S. dual listing must also be aware of, and observe, the disclosure obligations and restrictions under the rules of the local jurisdiction or exchange where its securities are listed, which may differ from those under U.S. securities laws. For example, a non-U.S.-listed company that regularly issues forward-looking guidance or measures not presented in accordance with applicable accounting standards may face limitations when seeking to make such disclosures as part of its U.S. listing, and investor communications may be significantly restricted during the SEC registration process due to a prohibition on "gun-jumping" under the Securities Act. Requirements and best practices on governance, such as board diversity or independence and committee responsibilities, and subsequent share transactions, such as public offerings or trading by insiders, may also differ between jurisdictions. To the extent a local listing is retained, the U.S. listing (or offering) itself may also impose prospectus or other filing requirements under local securities laws or listing rules.

Beyond the initial listing, however, issuers will also need to keep in mind the ongoing compliance and investor relations efforts and costs relating to a U.S. listing, as well as enhanced litigation risk.

We anticipate U.S. dual listings will continue to grow in popularity given the liquidity of the U.S. market compared to international exchanges.[11]

## T+1 Settlement Cycle

On May 28, 2024, the standard settlement cycle for most securities transactions in the United States through the Depository Trust Company was shortened from two business days after the trade date ("T+2") to one business day after the trade date ("T+1"). The SEC had previously adopted the required amendments to Rule 15c6-1 under the

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[11] Refer to the Debevoise In Depth dated June 18, 2024 (accessible here).

Exchange Act, stating in its final rule that shortening the settlement cycle is intended to promote investor protection, reduce risk and increase operational and capital efficiency, and serve as a useful step in identifying potential paths to a T+0 settlement cycle.

In the context of firm commitment underwritings, including underwritten block and other secondary trades, that price before 4:30 p.m. Eastern Time, closing will then occur on the next trading day. This may be particularly challenging to the extent that certificated, pledged or restricted securities are involved or hard copies of signatures (for example, stock powers) are required by transfer agents or other parties by closing. Additional planning may be necessary to the extent transactions involve settling other securities in markets not subject to T+1 settlement or involve converting foreign currencies.

Where a T+1 settlement is not practical, parties may agree to an alternative settlement cycle pursuant to the exception provided in Rule 15c6-1(d) under the Exchange Act. This option will likely continue to be utilized for debt refinancings involving a redemption notice, high-yield debt offerings and other complex transactions.

## Beneficial Ownership Reporting

During 2024, the SEC continued its focus on the beneficial ownership reporting obligations of investors in respect of U.S.-listed equity securities under the Exchange Act through both new rules coming into effect and enforcement actions. Effective February 5, 2024 and September 30, 2024, the filing deadlines for investors holding more than 5% of a class of U.S.-listed equity voting securities reporting on Schedule 13D or Schedule 13G, respectively, were accelerated as follows:[12]

- For Schedule 13D, the initial filing deadline was shortened from 10 days to five business days, and amendments must be filed within two business days (rather than "promptly").
- For certain Schedule 13G filers (qualified institutional investors and exempt investors), the initial filing deadline was shortened from 45 days after the end of a calendar year to 45 days after the end of the calendar quarter in which the investor beneficially owns more than 5% of the covered class.
- For other Schedule 13G filers (passive investors), the initial filing deadline was shortened from 10 days to five business days.

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[12] Refer to the Debevoise Update dated September 20, 2024 (accessible here) and the Debevoise In Depth dated October 12, 2023 (accessible here).

- For all Schedule 13G filers, amendments must now be filed 45 days after the calendar quarter (rather than after the calendar year) in which a material change occurred. Schedule 13G amendment obligations for qualified institutional investors and passive investors were also accelerated when their beneficial ownership exceeds 10% and increases or decreases by 5% thereafter.

Compliance with the new structured data requirement for Schedules 13D and 13G was required beginning December 18, 2024.

In addition, beginning in 2024, institutional investment managers that are required to file reports on Form 13F under Section 13(f) of the Exchange Act ("managers") were required, for the first time, to file a report on Form N-PX, which discloses the manager's proxy voting record regarding votes pursuant to Section 14A(a) and (b) of the Exchange Act on certain executive compensation matters.[13] Managers are now required to report, with respect to each security over which the manager exercised voting power, votes on approval of executive compensation, votes on the frequency of such executive compensation approval votes and votes to approve "golden parachute" compensation in connection with mergers or acquisitions. Managers are required to file reports on Form N-PX annually, no later than August 31 of each year, for the most recent 12-month period ended June 30. In 2025, because August 31 is a Sunday, managers must file Form N-PX by September 2, 2025.

The SEC also continued its enforcement of violations of beneficial ownership reporting requirements during 2024. On August 19, 2024, the SEC announced settled charges against Carl C. Icahn and his publicly traded partnership, Icahn Enterprises L.P. ("IEP"), for failing to disclose information relating to Mr. Icahn's pledges of IEP securities as collateral to secure personal margin loans and required IEP and Icahn to pay $1.5 million and $500,000 in penalties, respectively.[14] Additionally, on September 25, 2024, the SEC announced settled charges against 23 entities and individuals, including several non-U.S. institutional investors, in connection with failures to file Schedules 13D and 13G and Section 16 reports on a timely basis, with penalties ranging from $10,000 to $750,000. Many of the respondents were charged with multiple violations, although some were merely a few days late. This latest sweep of technical violations of Sections 13(d) and 16 of the Exchange Act demonstrate the SEC's ongoing focus in this area and the need for investors of U.S. public securities to establish and maintain robust controls and procedures.

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[13] Refer to the Debevoise In Depth dated August 1, 2024 (accessible here).

[14] Refer to the Debevoise Update dated August 21, 2024 (accessible here).

## Vacation of Nasdaq Board Diversity Requirements

On December 11, 2024, the U.S. Court of Appeals for the Fifth Circuit (the "Fifth Circuit"), sitting *en banc*, vacated the SEC's order approving Nasdaq's board diversity requirements.[15] The Fifth Circuit found that the Nasdaq diversity rules were "*arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law*" in violation of the Administrative Procedure Act. This ruling overturned the October 2023 decision by a three-judge panel of the Fifth Circuit that upheld Nasdaq's board diversity rule.

Accordingly, Nasdaq-listed companies are no longer required to comply with Nasdaq's board diversity rules, though a company may choose to continue to disclose board diversity data voluntarily. The rule had required all companies listed on Nasdaq, including FPIs, to publicly disclose diversity statistics regarding their boards of directors and to have, or explain why they do not have, at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an "underrepresented minority" or "LGBTQ+."

## Changes to EDGAR System

Enrollment for the SEC's new EDGAR filer access and account management system ("EDGAR Next") opens on March 24, 2025. Although 2024 annual reports on Form 20-F for FPIs with a calendar year end will not need to be filed through EDGAR Next, FPIs are encouraged to consider what actions they should take to prepare for EDGAR Next. FPIs can prepare for the transition by testing the beta system, which is currently open and allows testers to use EDGAR Next functions using fictitious data.

All filers will need to have enrolled in EDGAR Next by September 15, 2025. While enrollment opens on March 24, 2025, filers who do not enroll will still be able to file through the legacy EDGAR system until September 12, 2025. Importantly, filers who are not enrolled in EDGAR Next by December 19, 2025 will be required to submit an amended Form ID to access and make submissions on EDGAR, which may result in a delay in filing.

## SPACs and de-SPAC Transactions

On July 1, 2024, final rules relating to special purpose acquisition companies ("SPACs") and SPAC business combination transactions with private operating companies ("de-SPAC transactions") became effective.[16] The new rules created significant new disclosure obligations for SPACs and expanded potential liability under U.S. federal securities laws for SPACs and participants in SPAC IPOs and de-SPAC transactions.

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[15] Refer to the Debevoise Debrief dated December 13, 2024 (accessible here).

[16] Refer to the Debevoise In Depth dated February 1, 2024 (accessible here).

Key provisions of the final rules include:

- ***Underwriter Status and Liability for Participants***. The SEC did not adopt proposed Rule 140a under the Securities Act, which would have deemed SPAC IPO underwriters participating in de-SPAC transactions to be liable as statutory "underwriters" under the Securities Act, but did provide guidance to help participants in SPAC IPOs and de-SPAC transactions determine when they may have underwriter liability in connection with such transactions. In the absence of further clarification from the SEC or courts, financial institutions participating in de-SPAC transactions may take a conservative approach and treat these transactions more like a traditional IPO than a public M&A transaction to manage liability.

- ***Enhanced Disclosure Obligations***. The final rules require disclosure about the SPAC's sponsor, its affiliates and any promoters, including the controlling persons of the sponsor and any persons with direct or indirect material interests in the sponsor. The final rules also mandate that SPACs specifically disclose any actual or potential material conflict of interest between: (i) the sponsor or its affiliates and the SPAC's officers, directors or promoters or the target company's officers and directors and (ii) unaffiliated security holders of the SPAC. SPACs must also provide detailed disclosure regarding material potential sources of dilution, with sensitivity analyses at varying redemption levels, including information on the front cover of the prospectus. Additionally, SPACs must disclose certain information on the fairness of the de-SPAC transaction, including filing as an exhibit any opinion, report or appraisal received by the board of directors that materially relates to the fairness of the transaction.

- ***Expansion of Liability***. Under new Rule 145a under the Securities Act, SPACs are required to file a registration statement under the Securities Act for any de-SPAC transaction. Form F-4, filed by FPIs, was amended to require that SPACs and target companies be treated as co-registrants in connection with de-SPAC transactions, exposing the target company, its executive officers who sign the registration statement and its board of directors to potential liability under the Securities Act, including under Sections 11 and 12. SPACs also lost their ability to rely on the safe harbor protections under the Private Securities Litigation Reform Act of 1995, including for financial projections of the target company in de-SPAC transactions.

- ***Use of Projections***. The amended Item 10(b) of Regulation S-K outlines the SEC's approach regarding the use of projections in SEC filings and is not limited to those used in de-SPAC transactions. Projections not based on historical results must be clearly distinguished from those that are. Projections including non-GAAP financial measures must provide a clear definition of these measures, a description of the most directly comparable GAAP measure and an explanation for using the non-GAAP

financial measure instead of the GAAP measure. It is generally misleading to present projections based on historical results without giving the historical results of equal or greater prominence. New Item 1609 of Regulation S-K also requires SPACs to disclose the purpose of the financial projections and the party responsible for their preparation and any material assumptions underlying them.

### SEC Leadership and Rule-Making Agenda

On October 17, 2024, the SEC approved the publication of its rulemaking agenda in Fall 2024, which is expected to be released by January 2025. We anticipate the SEC's regulatory agenda and timing to be impacted by the incoming administration's personnel and priorities. For more information, see the full regulatory agenda here.

The end of 2024 also saw the departure announcements of several key SEC officials, including Char Gensler, Enforcement Director Grewal and Commissioner Lizárraga. Chair Gensler's tenure was marked by ambitious reforms and numerous legal challenges relating to cybersecurity disclosure, cryptocurrency enforcement, climate disclosure and restrictions on off-channel communications. Following Chair Gensler's resignation, most observers expect enforcement of these policies and regulations to wane, as President-Elect Trump has nominated former SEC Commissioner Paul Atkins, an outspoken advocate of cryptocurrency, who is expected to ease the SEC's policymaking and oversight functions, to replace Chair Gensler once he takes office.

Lastly, in observance of the passing of former President Jimmy Carter, the SEC, the New York Stock Exchange and Nasdaq all announced that January 9, 2025 will be treated as a federal holiday.

## UK AND EU DEVELOPMENTS

### New UK Listing Rules

On July 29, 2024, the new UK Listing Rules (the "Listing Rules") came into effect, replacing the existing Listing Rules.[17] The new Listing Rules represent a significant outcome of Lord Hill's UK Listings Review, which proposed various changes to the United Kingdom's listing regime with a view to making the London Stock Exchange (the "LSE") a more attractive listing venue for issuers.

Key changes introduced by the Listing Rules include:

[17] Refer to the Debevoise Update dated July 16, 2024 (accessible here) and the Debevoise Update dated January 2, 2024 (accessible here).

- ***Single Listing Category for Equity Shares***. A single listing category replaced the previous premium and standard listing segments. Once the new Listing Rules came into effect, issuers with equity shares previously listed on the premium segment became automatically listed on the new "equity shares in commercial companies" ("ESCC") category, whereas issuers whose shares were listed on the standard segment of the LSE became listed on either the new international secondary listings category (for non-UK incorporated companies that were not able to satisfy the requirements of the single category) or a "transition category." There is also a new listing category for shell companies, with separate listing categories remaining for open-ended investment companies, closed-ended investment funds, securitized derivatives, depositary receipts, debt and other debt-like securities.

- ***Listing Eligibility***. For the new ESCC category, a minimum 10% free float and £30 million market capitalization is required for listing (similar to the prior premium listing regime). Companies are still required to comply with the financial information disclosure requirements under the UK Prospectus Regulation. However, three years of audited historical financial information covering 75% of the issuer's business, a three-year representative revenue earning track record and a "clean" (or unqualified) working capital statement are no longer required.

- ***Sponsor Regime***. For the ESCC category, the role of a sponsor at the time of an issuer's listing is similar to the previous regime. Post-IPO, the sponsor regime is limited to certain transactions, including capital raisings, reverse takeovers, transfers between listing categories and related-party transactions.

- ***Controlling Shareholders and Relationship Agreements***. Issuers listed on the ESCC category no longer need to enter into a relationship agreement with controlling shareholders (*i.e.*, shareholders holding at least 30% of votes in an issuer) in respect of specified independence requirements. Instead, if a controlling shareholder proposes a shareholder resolution, the issuer will need to include an opinion statement of its board in the shareholder circular if a director considers that the resolution is, or appears to be, intended to circumvent the Listing Rules. The Listing Rules also include amended guidance as to independence of controlling shareholders.

- ***Significant Transaction Disclosures***. Streamlined notifications, rather than a shareholder vote, are now required for class 1 transactions (except for reverse takeovers) and transactions that meet any of the class tests equal to or exceeding 25%, and audited financial information of the target (except for disposals) or a fairness statement on the consideration are no longer required for acquisitions. While disclosure will still need to be made as soon as possible after the terms of a transaction have been agreed and once a transaction is complete, certain information

may be delayed until such time as the issuer becomes aware of it post-announcement.

- ***Related-Party Transactions***. There is no longer a requirement for shareholder approval, but a transaction announcement must be made. For any related-party transactions that meet at least 5% of any of the applicable class tests, issuers must obtain board approval, provide a fair and reasonable sponsor opinion to their shareholders and notify the market. The threshold at which a substantial shareholder becomes a related party was increased from 10% to 20%.

- ***Dual-Class Share Structures***. Limits on the maximum enhanced voting rights in dual-class share structures have been removed. The group of people that may hold enhanced voting rights has been widened to persons who, at the time of listing, are directors, investors, shareholders or employees of the issuer or entities established for the sole benefit of, or solely owned and controlled by, any of such persons. Pre-IPO institutional investors that are not natural persons may hold enhanced voting rights, subject to transfer restrictions and a 10-year sunset period. Enhanced voting rights held by specified natural persons are not subject to the 10-year sunset. No shares carrying enhanced voting rights can be issued after listing.

- ***Independent Business and Control of Business***. There are no longer eligibility requirements or continuing obligations in respect of the independence of a business, subject to limited exceptions for externally managed companies and controlling shareholders.

## 2024 UK Corporate Governance Code

On January 22, 2024, the Financial Reporting Council (the "FRC") published the 2024 UK Corporate Governance Code (the "Code"), which came into effect on January 1, 2025 (except for Provision 29, which will come into effect on January 1, 2026).[18] The Code, which superseded the UK Corporate Governance Code last updated in 2018, aims to ensure the competitiveness of the UK listing regime while maintaining high governance standards. The Code applies to companies listed in the commercial companies or the closed-ended investment funds category, regardless of the jurisdiction of their incorporation.

The Code covers five topics: (i) board leadership and company purpose; (ii) division of responsibilities; (iii) composition, succession and evaluation; (iv) audit, risk and internal

[18] Refer to the Debevoise Debrief dated January 31, 2024 (accessible here).

control; and (v) remuneration. The FRC also published updated guidance on the Code, which is being further updated on an ongoing basis.

The Code, similarly to its predecessor, operates on a “comply or explain” basis, meaning that companies may deviate from the Code as long as they provide a clear explanation for the noncompliance. To comply with the UK Listing Rules, companies must apply the Principles of the Code and comply, or explain reasons for the noncompliance, with the Provisions of the Code.

The updates introduced by the Code are mainly focused on risk management and internal controls and include:

- ***Principle O***. Boards are now required not only to establish effective risk management and internal control frameworks but also to maintain such frameworks.
- ***Provision 29***. Companies are required to carry out, at least annually, a review of the effectiveness of all material controls, including financial, operational, reporting and compliance controls, and to describe in the annual report how the board monitored and reviewed such frameworks. The annual report disclosure must include a declaration as to the effectiveness of such controls as of the balance sheet date, as well as a description of any material controls that have not been effective and the action taken or proposed to improve the relevant control.
- ***Principle C***. Enhanced governance reporting through emphasizing board decisions and their outcomes in the context of the company’s overall strategy and objectives, rather than generic, boilerplate statements that provide little insight.
- ***Principle J***. Diversity, inclusion and equal opportunity are promoted, but without referencing specific groups.
- ***Provision 2***. Companies must assess how culture has been embedded in addition to assessing and monitoring company culture,
- ***Provision 37***. Directors’ contracts or other director remuneration agreements must include malus and clawback provisions.
- ***Provision 38***. Required annual report on malus and clawback provisions.

### FCA’s Consultation Paper on Admission to Trading Regime

On July 26, 2024, the FCA published Consultation Paper CP24/12, which sets out proposed rules for companies seeking to admit securities to a UK-regulated market or a

"primary" multilateral trading facility ("MTF") under the new Public Offers and Admissions to Trading Regulations ("POATRs") 2024 framework.[19] The POATRs came into force in part on January 30, 2024 and will become fully effective once the FCA publishes the new rules, and the onshored EU prospectus regime is repealed in accordance with the Financial Services and Markets Act 2023. The FCA aims to finalize the new rules by the end of the first half of 2025.

The POATRs represent a new framework for replacing the existing prospectus regime, separating the public offers regime and the admissions to trading regime and delegating responsibility for establishing new rules for both regimes to the FCA.

The key proposals include:

- ***Prospectus Requirements***. Public offers of securities will no longer require a prospectus; however, any public offer of "relevant securities" will be prohibited unless it falls within a specific exemption, which includes cases where the securities are already admitted to trading on a UK-regulated market or UK primary MTF. The threshold for requiring a prospectus for further issuances (of securities already admitted to trading on a regulated market) is expected to be raised from the current 20% of the number of securities already admitted to trading to 75%. Shares issued as consideration for a takeover offer below the 75% threshold are expected to qualify under the existing share-capital exemption.

  The FCA proposes to reduce the prescribed content requirements for prospectus summaries by removing the detailed financial information requirements and allowing issuers to include cross-references to the relevant prospectus pages. In addition, only three (rather than six) working days would be required for a prospectus to be public before shares can be admitted to trading in an initial public offering.

- ***Protected Forward-Looking Statements ("PFLS")***. The POATRs provide that certain forward-looking statements can be deemed to be PFLS, whereby directors will only be liable for such statements if they are made recklessly (instead of the lower standard of negligence). The FCA proposed a general definition of PFLS as well.

- ***Admissions on MTFs***. The FCA's proposals would require an MTF admission prospectus for all initial admissions to trading and reverse takeovers (with exceptions for existing simplified routes to admission) on an MTF, such as AIM and the Aquis Stock Exchange, or AQSE. Currently, MTFs typically accept an admissions

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[19] Refer to the Debevoise Update dated August 5, 2024 (accessible here) and the Debevoise Debrief dated February 8, 2024 (accessible here).

document (which is less burdensome and costly to prepare), rather than an FCA-approved prospectus. An MTF admission prospectus will be subject to the same statutory responsibility and compensation provisions that apply to prospectuses, with the detailed content requirements to be set by the relevant MTF operator.

### FCA's Consultation Paper on PISCES

On December 17, 2024, the FCA published Consultation Paper CP24/29 (the "Proposal"), which sets out its proposed approach, objectives and regulatory framework for the Private Intermittent Securities and Capital Exchange System ("PISCES"), a new trading platform to be operated by various market participants, intended to facilitate trading shares of private companies.[20] The publication follows HM Treasury's consultation paper on PISCES published in March 2024 (available here) and the UK government's response published on November 14, 2024 (available here).[21]

PISCES is envisioned as a means to give investors and employees a path to liquidity for their investment in a private company that does not include a traditional listing on a public market or an M&A transaction. The deadline for comments on the Proposal is February 17, 2025. The FCA, in close partnership with HM Treasury, aims to launch PISCES by May 2025, following publication of the final rules.

The key proposals for PISCES include:

- ***Disclosures***. Companies would be required to disclose a standardized set of core information to potential investors who are allowed to participate in the trading event. Such core information would include, among other things, a business and management overview, certain financial information for the past three years and interim financial data in certain cases, major shareholdings and material litigation and contracts, as well as details on past and future PISCES trading events. Companies also would be permitted to omit certain core disclosure information in certain circumstances if sufficient explanatory disclosure is provided. PISCES operators would be tasked with ensuring appropriate disclosure arrangements for their market's efficient and effective functioning, including through bespoke rules requiring disclosure of other categories of information not otherwise listed as core disclosure information through various models suggested by the Proposal.
- ***Liability Regime***. Under the Proposal, core information would be subject to a negligence standard, and forward-looking statements and other additional information provided would be subject to a recklessness or dishonesty standard. The FCA has rule-making authority to specify the definition of a "forward-looking

[20] Refer to the Debevoise In Depth dated December 23, 2024 (accessible here).

[21] Refer to the Debevoise In Depth dated November 21, 2024 (accessible here).

statement" for the PISCES regime, which is expected to include financial forecasts and details of a company's business strategy for the next 12 months. However, as trading on PISCES would not be subject to UK Market Abuse Regulation, the Proposal notes a heightened risk to investors and accordingly would mandate various risk warnings.

- ***Trading Events***. Under the Proposal, PISCES operators would organize and run trading events. PISCES platforms would operate as multilateral systems, but they would not be trading venues as defined under UK MiFIR. PISCES operators would not be subject to the regulations that apply to multilateral trading facilities but would be subject to a bespoke regulatory regime to be set out in the FCA's new PISCES sourcebook.

  PISCES operators would be required to ensure that certain information on trading events is made publicly available in a timely manner before any trading event. In addition to the PISCES platform being available only to certain groups of investors, the Proposal also provides that access to a trading event could be limited by a company but only if there is a legitimate commercial interest of the company that requires promotion or protection, such as restricting access to competitors, investors from certain jurisdictions or particular types of investors.

- ***Prohibitions on Manipulative Trading Practices***. PISCES operators would be subject to existing obligations applicable to trading venue operators to ensure fair and orderly trading on their platform. The FCA did not specify types of manipulative trading practices that PISCES operators should prohibit in the Proposal. Instead, the Proposal states that PISCES sandbox applicants should provide a comprehensive assessment of their rules and arrangements for detecting and preventing manipulative trading practices.

## Accelerated Securities Settlement

On March 28, 2024, the Accelerated Settlement Taskforce, created to explore the potential for faster settlement of securities trades in the United Kingdom, published its report on the risks and benefits of accelerating settlement of securities transactions. The report recommended that the United Kingdom should commit to moving to a T+1 settlement cycle (from the current T+2 cycle) by no later than December 31, 2027. In addition, it was suggested that the United Kingdom and other European jurisdictions should collaborate closely to determine whether a coordinated move to the T+1 cycle is feasible, and if other European jurisdictions commit to a transition date, the United Kingdom should consider aligning its timeline. Further, the Taskforce recommended that a technical group of industry experts be established to identify the technical and

operational changes required for the T+1 transition in 2025 and to set a transition date before the end of 2027.

On November 18, 2024, the European Securities and Markets Authority (the "ESMA") published a report on the assessment of the shortening of the settlement cycle in the European Union. The ESMA recommended that the move to a T+1 cycle occur simultaneously across all relevant instruments on October 11, 2027. This change will require, among other things, certain amendments to the existing Central Securities Depositories Regulation. The ESMA expects to work on the transition to a T+1 cycle together with the European Commission and the European Central Bank.

These proposals align with the T+1 settlement adopted by the U.S. capital markets in May 2024 (see "*U.S. Developments—T+1 Settlement Cycle*" above).

### Changes to the EU Prospectus Regulation Under the EU Listing Act

On November 14, 2024, the EU Listing Act[22] was adopted. The Act was a legislative package comprising amendments to Regulation (EU) 2017/1129 (the "EU Prospectus Regulation"), the EU Market Abuse Regulation ("EU MAR") and EU MiFIR and a directive amending EU MiFID II and repealing the EU Listing Directive. The changes were aimed at simplifying the listing rules for companies that want to list on public stock exchanges in the European Union. The EU Listing Act went into effect on December 4, 2024, with certain changes to come into force in 2026.

The key updates to the EU Prospectus Regulation include:

- ***Prospectus Exemptions***. The threshold for exempt offerings and listings without requiring a prospectus was increased from up to 20% to up to 30% of securities already admitted to trading over a 12-month period. This exemption is available if certain conditions are met, such as filing an up to 11-page summary document with the relevant competent authority. There is also a new exemption for both public offers and admissions to trading for issuers that issue securities fungible with those that have been admitted to trading for at least 18 months and that file the summary document referred to above and satisfy certain other requirements. In addition, beginning June 5, 2026, offerings of securities for total consideration of less than €12 million (over a 12-month period) will not require a prospectus (and EU Member States will have the right to reduce such amount to €5 million).

[22] Consists of Regulation (EU) 2024/2809, Directive (EU) 2024/2810 and Directive (EU) 2024/2811.

- ***Management Report***. Prospectuses for equity offerings will need to incorporate by reference, or include the information set out in, the issuer's management report (including sustainability reporting).

- ***Financial Statements***. Financial statements in the prospectus must now cover only two (previously, three) years of financial information for equity offerings and one year for debt offerings (although offerings to "qualified institutional buyers" will likely still need to include three years of financial data as a matter of practice).

- ***OFR***. There is no longer a requirement to include an "Operating and Financial Review and Prospects" (or "OFR") section in the prospectus (similar to the MD&A) detailing the issuer's financial performance, although OFR may continue to be included as a matter of market practice.

- ***Risk Factors***. Risk factor disclosures may no longer include generic risks or general disclaimers, and issuers must provide specific information about material risks to investors.

- ***Offer Period and Withdrawal Rights***. The prospectus must now be made available three (rather than six) working days before the initial public offering (similar to the UK reforms discussed above). Investors' withdrawal rights during book-building periods have been extended to three (from two) working days.

- ***Format***. Effective from June 5, 2026, the maximum permitted length of equity prospectuses will be 300 pages (not including certain sections such as the summary and documents incorporated by reference) to encourage concise and focused disclosures. Additional provisions to take effect in 2026 include standardized templates and layouts for prospectuses, as well as guidelines on the use of plain language in disclosures.

The EU Listing Act also made several changes to EU MAR, including dispensing with the requirement for immediate disclosure of inside information related to intermediate steps in a protracted process, which may not occur before the final decision is made, and specifying the circumstances in which an issuer can delay disclosure of inside information. These changes will apply beginning June 5, 2026.

## EU Green Bonds Regulation

On December 21, 2024, the European Union's new Green Bonds Regulation (the "Green Bonds Regulation") became available for issuers.[23] The Green Bonds Regulation is a

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[23] Refer to the Debevoise In Depth dated February 20, 2024 (accessible here).

voluntary standard for issuers of bonds that publish a prospectus under the EU Prospectus Regulation and wish to use the designation "European Green Bond" or "EuGB" for bonds that are made available to investors in the European Union. The Green Bonds Regulation sets out eligibility criteria for investing the proceeds of bonds in environmentally sustainable projects, standards for pre-issue and post-issue sustainability reporting and a new framework for external review of those reports and supervision of the reviewers.

The proceeds of European Green Bonds are primarily expected to be invested in economic activities that are aligned to the EU Taxonomy Regulation (the "Taxonomy Regulation"), either directly (through the financing of "real economy" assets and expenditure) or indirectly (through the creation of equity or debt instruments that finance). The Taxonomy Regulation is the European Union's classification system for environmentally sustainable activities. The Green Bonds Regulation includes an option for bonds that are marketed with a broad commitment to invest in environmentally sustainable activities, but are not aligned with the Taxonomy Regulation, to opt-in voluntarily to a number of the Green Bonds Regulation's disclosure requirements.

The Green Bonds Regulation also introduces standard forms of disclosure and reporting for European Green Bond issues, requiring disclosure of methodologies and key assumptions used when preparing reports and external review of the information on the use of proceeds of the European Green Bonds, in order to facilitate comparability of European Green Bonds issues. The Green Bonds Regulation will be reviewed by December 21, 2028 (and every three years thereafter) by the European Commission.

### Draghi Report on European Competitiveness

On September 9, 2024, the European Commission published "The Future of European Competitiveness" (the "Draghi Report"), authored by Mario Draghi, former President of the European Central Bank and former Prime Minister of Italy. The Draghi Report offered a comprehensive blueprint for revitalizing the European economic model in light of global challenges. In addition to identifying key areas for growth, such as innovation, decarbonization and increasing security and reducing external dependencies, the Draghi Report highlights the importance of creating a unified European capital market to address fragmentation, including by improving access to financing for businesses of all sizes and increasing flows of savings into European capital markets. In order to unlock private capital, the Draghi Report proposes a European Security Exchange Commission, similar to the U.S. Securities and Exchange Commission, whereby the current ESMA would transition from a body that coordinates national regulators into the single regulator for all EU security markets entrusted with exclusive supervision over large multinational issuers and major regulated markets with trading platforms.

The Draghi Report also proposes to harmonize insolvency frameworks in order to remove fragmentation created by differing creditor hierarchies and eliminate taxation obstacles to cross-border investing across Europe, with the ultimate goal of creating a single central counterparty clearing house and a single central securities depository for all securities trades.

In addition, the Draghi Report outlines various measures to encourage investment, both among households and at the EU budgetary level. To increase financing capacity through the banking sector, the report also recommends that prudential and other requirements be adjusted for securitized assets, including in light of the upcoming implementation of Basel III.

In November 2024, Ursula von der Leyen established a task force to focus on several measures of the Draghi Report, with many of its main conclusions a feature of her political program for her second term as European Commission President.

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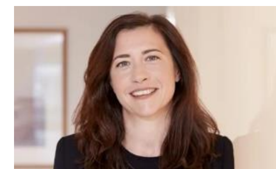
Please do not hesitate to contact us with any questions.

Nicholas P. Pellicani
Partner, London
+44 20 7786 9140
nppellicani@debevoise.com

Paul M. Rodel
Partner, New York
+1 212 909 6478
pmrodel@debevoise.com



Vera Losonci
Counsel, London
+44 20 7786 9055
vlosonci@debevoise.com

Evgenii Lebedev
Associate, London
+44 20 7786 3021
ealebedev@debevoise.com

Esther Stefanini
Associate, London
+44 20 7786 9145
estefanini@debevoise.com

Maayan G. Stein
Associate, New York
+1 212 909 6511
mstein2@debevoise.com

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