

SEC Disclosure Considerations Arising From the Israel-Hamas War

Registrants may have disclosure obligations under the federal securities laws related to the direct or indirect impact of Israel's declaration of war on Hamas, a U.S. designated Foreign Terrorist Organization,¹ and current armed conflict in Israel and the Gaza Strip (the "War").

Given the recency of the War, the Securities and Exchange Commission's (the "SEC") Division of Corporation Finance is yet to provide specific disclosure guidance related to the War. For context, when the geopolitical situation in Eastern Europe intensified in February 2022, with Russia's invasion of Ukraine, the SEC released a sample letter reflecting comments it may issue to a registrant regarding compliance with the SEC's disclosure obligations. The sample letter underscores the need for registrants to evaluate both direct and indirect impacts of wars, including potential or actual disruptions to suppliers, customers, or employees, among other considerations. The sample comments within the letter primarily focus on (1) risk factors, (2) Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A), (3) internal control over financial reporting, (4) disclosure controls and procedures, and (5) non-GAAP measures. See [SEC.gov | Sample Letter to Companies Regarding Disclosures Pertaining to Russia's Invasion of Ukraine and Related Supply Chain Issues \[1\]](#).

Thus, companies that have direct or indirect business operations, interests or investments in the War area, or business relationships with companies that do, should evaluate any material impacts and risks of potential future impacts related to the War. We recommend that in addition to the reminders we have provided in this alert, companies also consider, as applicable, the guidance in SEC's sample letter with the understanding that the significance of the issues discussed in this alert or the SEC's sample letter will vary depending on a company's industry and circumstances.

Registration Statements

It is important that companies aggregate and consider their direct and indirect exposures to the impacts of the War and consider the SEC disclosures requirements as well as financial accounting and reporting implications, which could be numerous, particularly for those companies with material subsidiaries, operations, investments, contractual arrangements, or joint ventures in the War area. Companies with significant suppliers, vendors, or customers in the War area, as well as organizations that lend to or borrow from entities in those countries, also may experience accounting challenges. Even entities that do not have direct exposure to Israel and Gaza Strip are likely to be affected by the overall economic uncertainty and negative impacts on the global economy and major financial markets arising from the war.

¹ The U.S. Department of State designated Hamas a Foreign Terrorist Organization in 1997. See [Foreign Terrorist Organizations - United States Department of State](#).

To this end, issuers preparing registration statements or amendments to registration statements that will be filed with the SEC should consider the issues discussed in this alert. Additional considerations should be given to broad financial reporting and accounting considerations, including forecasting, inflation, balance sheet classification considerations, income statement classification considerations, impairment of non-financial assets (including goodwill), and foreign currency matters. Companies that have material business, financial or other impacts resulting (or that may result) from the War should discuss the financial statement disclosure implications with the company's independent auditor.

Registrants may wish to contact the SEC staff to discuss any specific facts or circumstances that may prevent them from complying with their reporting obligations.

Form 10-Q, Form 10-K and Form 8-K Reports

For companies filing a quarterly report on Form 10-Q in late October or early November, the most likely sections of the report that might require additional or revised disclosure would be risk factors, for potential future risks and impacts, and MD&A, for impacts that have actually occurred, even if the impacts occurred after the end of the most recent fiscal quarter.

Companies whose next periodic report will be a Form 10-K annual report should, in addition, review their disclosure in the Business section. Companies should monitor the War as it develops and consider whether it may be necessary or advisable to file a Form 8-K to report material non-public information about developments earlier than the filing date for the company's next Form 10-Q or Form 10-K report. This could be especially important if a company or any of its insiders intend to engage in any market activity involving the company's securities.

MD&A and Risk Factors Drafting Reminders

When drafting or revising disclosure about the War, companies should keep in mind the following disclosure requirements and SEC staff guidance.

- *The MD&A and Risk Factors in [Form 10-Q](#) and [Form 10-K](#) reports speak as of the filing date, not the end of the fiscal period covered by the report.* This means that events or impacts that have actually occurred and had a material effect on the company's business or financial statements may require disclosure in MD&A or elsewhere in the report, even if the events occurred after the close of the relevant fiscal period.
- *Events or impacts that have actually occurred and had a material impact on the company should be disclosed in MD&A, Business or another section of the report, not solely in Risk Factors.* Disclosure of events or impacts that have had a material impact on the company solely in the Risk Factors section is usually inappropriate and client teams should consider whether it is appropriate to add disclosure elsewhere.
- *Risk Factor disclosure related to the War may require revision of existing Risk Factors.* This is particularly true if the company's Risk Factors include a section that includes general political risks, general market instability or risks of terrorist acts. Companies also need to be careful to not describe a situation as hypothetical (such as through the use of the word 'may') if the risk has already materialized.

- *Although there is no SEC staff guidance on the presentation of risk factor updates in Form 10-Q reports, new or materially revised risk factors are likely to be more effective if identified or made prominent.* This is particularly true if the company’s Risk Factors section is lengthy. There are a variety of ways to highlight material changes in Risk Factors. As examples, a company could identify them by caption (“The risk factors under the following captions below have been added or materially revised since the company’s most recent quarterly report:”); by marking new or materially revised risk factors with a typographical or other symbol; or by adding a notation before or after new or materially revised risk factors to identify these risk factors (“Added November __, 2023” or “Revised November __, 2023”). Companies should also consider the order of their risk factors. These examples are not intended to be exclusive — any method that facilitates identification of new or materially revised risk factors is likely to make this disclosure more effective.
- *Disclosure that relates to ongoing events or conditions should be reviewed shortly before filing.* Form 10-Q and Form 10-K reports often include disclosure that was drafted several weeks before the filing date. When disclosure relates to events such as the War that may change significantly and often, the company should ensure that this disclosure is reviewed for accuracy shortly before filing.

Sample Business and Financial Impacts and Risks

Actual impacts and potential future risks will vary greatly depending on a company’s business and geographic exposure, as will any related disclosure. The following list includes a variety of areas that companies may wish to consider when evaluating actual impacts and potential risks:

Business and Operational Impacts

- Disruptions to operations and business continuity, including physical damage or impaired access to company facilities, offices or technology, and disruptions in access to electricity, gasoline or water
- Workforce disruptions, including impact on key individuals (employees, directors, officers or partners), mobilization of employees who are members of the Israeli military reserves to active duty, disrupted communication with employees in the conflict zone and restrictions on movement in areas subject to armed conflict
- Disruptions to the company’s customers and markets
- Competitive conditions
- Supplier, vendor and supply chain disruptions
- Uncertainty around trade routes
- Availability of travel to and from the region
- Industry-specific business factors, such as
 - Technology research and development, including Artificial Intelligence (AI) research and development
 - Microchip or other manufacturing
 - Biotech/pharmaceutical research and development
 - Clinical trials of pharmaceutical products
 - Travel and/or hospitality industry
- Cybersecurity risks

General Macroeconomic and Political Risks

- Financial markets, commodity and currency impacts
- Oil and gas prices
- General market instability
- Geopolitical, trade and sanctions risks
- Regional and/or international expansion of the current armed conflict
- Violent protests and/or terrorist acts outside of the immediate conflict area
- Potential financial sanctions and/or commercial embargoes or any interruption or reduction of trade with Israel or the Palestinian Territories, including boycotts of affiliated firms or increasing difficulty of getting export authorizations

Other Risks

- Insurance exclusions applicable to outbreak or escalation of armed conflict, declarations of war and/or terrorist acts.

Financial Statement Disclosure

As noted above, companies that have material business, financial or other impacts resulting (or that may result) from the War should discuss the financial statement disclosure implications with the company's independent auditor.

SEC Filing Obligations

Companies that experience difficulties or delays with SEC filing obligations as a result of the War may consider Rule 12b-25 of the Securities Exchange Act of 1934, which requires them to provide notification of the late filing of Form 10-K, Form 20-F, or Form 10-Q. It also gives companies an additional 15 business days to file annual reports on Form 10-K or Form 20-F or 5 business days to file a Form 10-Q. Further, registrants may wish to contact the SEC staff to discuss any specific facts or circumstances that may prevent them from complying with their reporting obligations.

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