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ACCOUNTING GUIDANCE

- Accounting guidance issued in third quarter 2023

REGULATORY UPDATE

- SEC adopts rules on cybersecurity risk management, strategy, governance, and incident disclosures by public companies
- SEC enhances the regulation of private fund advisers
- SEC adopts rule enhancements to prevent misleading or deceptive investment fund names

STANDARDS ADOPTION

- Standards issued in 2023
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Accounting, financial reporting, and regulatory developments

THIRD QUARTER 2023

This update highlights some of the more important 2023 third quarter accounting, financial reporting, and regulatory developments that may impact both public and private companies. The content is not meant to be all-inclusive.

VIEW THE DOCUMENT

Accounting guidance

Accounting guidance issued in third quarter 2023

ASU 2023-05: Business Combinations — Joint Venture Formations (Subtopic 805-60) — Recognition and Initial Measurement (ASU 2023-05) addresses the accounting for contributions made to a joint venture upon formation in a joint venture's separate financial statements. ASU 2023-05 is intended to reduce diversity in practice related to the accounting by a joint venture that has resulted from the lack of authoritative guidance on measuring assets and liabilities contributed upon the initial formation of a joint venture. The ASU requires a joint venture to initially measure all assets and liabilities contributed upon initial formation at fair value. The new guidance doesn't change the definition of a joint venture or the accounting by the investors with an investment in a joint venture.

The new guidance will be effective for all joint ventures formed on or after Jan. 1, 2025; however, early adoption is permitted. For joint ventures formed before the effective date of ASU 2023-05, entities may elect to apply the guidance either prospectively or retrospectively, if the joint venture has sufficient information.

ASU 2023-04: Liabilities (Topic 405) — Amendments to SEC Paragraphs Pursuant to SEC Accounting Bulletin No. 121 (SEC update) requires entities that maintain custody of crypto assets on behalf of others to record a liability for the amounts held for users along with a corresponding asset. This guidance requires the reporting entity to recognize the asset and liability at fair value and remeasure both the asset and liability at fair value each reporting period. The ASU was effective upon issuance.

ASU 2023-03: Presentation of Financial Statements (Topic 205), Income Statement — Reporting Comprehensive Income (Topic 220), Distinguishing Liabilities from Equity (Topic 480), Equity (Topic 505), and Compensation — Stock Compensation (Topic 718): Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 120, SEC Staff Announcement at the March 24, 2022 EITF Meeting, and Staff Accounting Bulletin Topic 6.B, Accounting Series Release 280 — General Revision of Regulation S-X: Income or Loss Applicable to Common Stock (SEC update) provides guidance on estimating the fair value of share-based payment arrangements that are issued when a company is in possession of material nonpublic information. The guidance includes examples of when registrants may need to make adjustments to the current price of the underlying share or the expected volatility when estimating the fair value of the awards. The ASU was effective upon issuance.

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Regulatory update

SEC adopts rules on cybersecurity risk management, strategy, governance, and incident disclosures by public companies

In July 2023, the SEC adopted rules requiring registrants to disclose material cybersecurity incidents they experience and to disclose on an annual basis material information regarding their cybersecurity risk management, strategy, and governance. The Commission also adopted rules requiring foreign private issuers to make comparable disclosures.

According to SEC Chair Gary Gensler, “currently, many public companies provide cybersecurity disclosure to investors. I think companies and investors alike, however, would benefit if this disclosure were made in a more consistent, comparable, and decision-useful way. Through helping to ensure that companies disclose material cybersecurity information, today’s rules will benefit investors, companies, and the markets connecting them.”

The new rules will require registrants to disclose on the new Item 1.05 of Form 8-K any cybersecurity incident they determine to be material and to describe the material aspects of the incident’s nature, scope, and timing, as well as its material impact or reasonably likely material impact on the registrant. An Item 1.05 Form 8-K will generally be due four business days after a registrant determines that a cybersecurity incident is material; however, delay may be permitted in circumstances where immediate disclosure would pose a substantial risk to national security or public safety and notifies the Commission of such determination in writing.

The new rules also add Regulation S-K Item 106, which will require registrants to describe their processes, if any, for assessing, identifying, and managing material risks from cybersecurity threats, as well as the material effects or reasonably likely material effects of risks from cybersecurity threats and previous cybersecurity incidents. Item 106 will also require registrants to describe the board of directors’ oversight of risks from cybersecurity threats and management’s role and expertise in assessing and managing material risks from cybersecurity threats. These disclosures will be required in a registrant’s annual report on Form 10-K.

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The final rules became effective 30 days following publication of the adopting release in the Federal Register. The Form 10-K disclosures will be due beginning with annual reports for fiscal years ending on or after Dec. 15, 2023. The Form 8-K and Form 6-K disclosures will be due beginning the later of 90 days after the date of publication in the Federal Register or Dec. 18, 2023. Smaller reporting companies will have an additional 180 days before they must begin providing the Form 8-K disclosure. With respect to compliance with the structured data requirements, all registrants must tag disclosures required under the final rules in Inline XBRL beginning one year after initial compliance with the related disclosure requirement.

SEC enhances the regulation of private fund advisers

In August 2023, the SEC adopted new **rules and rule amendments** to enhance the regulation of private fund advisers and update the existing compliance rule that applies to all investment advisers. The new rules and amendments are designed to protect private fund investors by increasing transparency, competition, and efficiency in the private funds market.

“Private funds and their advisers play an important role in nearly every sector of the capital markets,” said SEC Chair Gary Gensler. “By enhancing advisers’ transparency and integrity, we will help promote greater competition and thereby efficiency.”

To enhance transparency, the final rules will require private fund advisers registered with the Commission to provide investors with quarterly statements detailing certain information regarding fund fees, expenses, and performance. In addition, the final rules will require a private fund adviser registered with the Commission to obtain and distribute to investors an annual financial statement audit of each private fund it advises and, in connection with an adviser-led secondary transaction, a fairness opinion or valuation opinion.

To better protect investors, the final rules will prohibit all private fund advisers from providing investors with preferential treatment regarding redemptions and information if such treatment would have a material, negative effect on other investors. In all other cases of preferential treatment, the Commission adopted a disclosure-based exception to the proposed prohibition, including a requirement to provide certain specified disclosure regarding preferential terms to all current and prospective investors.

In addition, the final rules will restrict certain other private fund adviser activity that's contrary to the public interest and the protection of investors. Advisers generally won't be prohibited from engaging in certain restricted activities, so long as they provide appropriate specified disclosure and, in some cases, obtain investor consent. The final rules, however, won't permit an adviser to charge or allocate to the private fund certain investigation costs where there is a sanction for a violation of the Investment Advisers Act of 1940 or its rules.

To avoid requiring advisers and investors to renegotiate governing agreements for existing funds, the Commission adopted legacy status provisions applicable to certain of the restricted activities and preferential treatment provisions. Such legacy status will apply to those governing agreements entered into in writing prior to the compliance date and with respect to funds that have commenced operations as of the compliance date.

SEC adopts rule enhancements to prevent misleading or deceptive investment fund names

In September 2023, the SEC adopted amendments to the Investment Company Act "Names Rule," which addresses fund names that are likely to mislead investors about a fund's investments and risks. The amendments modernize and enhance the Names Rule and other names-related regulatory requirements to further the Commission's investor protection goals and to address developments in the fund industry in the approximately 20 years since the rule was adopted.

"As the fund industry has developed over the last two decades, gaps in the current Names Rule may undermine investor protection," said SEC Chair Gary Gensler. "Today's final rules will help ensure that a fund's portfolio aligns with a fund's name. Such truth in advertising promotes fund integrity on behalf of fund investors."

Typically, a fund's name is the first piece of information that investors receive about a fund, and fund names offer important signaling for investors in assessing their investment options. The Names Rule currently requires registered investment companies whose names suggest a focus in a particular type of investment to adopt a policy to invest at least 80% of the value of their assets in those investments. The amendments to the Names Rule will enhance the rule's protections by requiring more funds to adopt an 80% investment policy, including funds with names suggesting a focus in investments with particular characteristics, for example, terms such as "growth" or "value," or certain terms that reference a thematic investment focus,

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such as the incorporation of one or more environmental, social, or governance (ESG) factors. The amendments will also include a new requirement that a fund review its portfolio assets' treatment under its 80% investment policy at least quarterly and will include specific time frames — generally 90 days — for getting back into compliance if a fund departs from its 80% investment policy.

The amendments will include enhanced prospectus disclosure requirements for terminology used in fund names, including a requirement that any terms used in the fund's name that suggest an investment focus must be consistent with those terms' plain English meaning or established industry use. The amendments will also include additional reporting and recordkeeping requirements for funds regarding compliance with the names-related regulatory requirements.

The amendments will become effective 60 days after publication in the Federal Register. Fund groups with net assets of $1 billion or more will have 24 months to comply with the amendments, and fund groups with net assets of less than $1 billion will have 30 months to comply.

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Standards adoption

Standards issued in 2023

Final ASU	Early adoption	Effective date
ASU 2023-05: *Business Combinations — Joint Venture Formations (Subtopic 805-60) — Recognition and Initial Measurement*	Yes	Effective for all joint ventures with a formation date on or after Jan. 1, 2025.
ASU 2023-04: *Liabilities (Topic 405) — Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 121*	N/A	Effective upon issuance.
ASU 2023-03: *Presentation of Financial Statements (Topic 205), Income Statement — Reporting Comprehensive Income (Topic 220), Distinguishing Liabilities from Equity (Topic 480), Equity (Topic 505), and Compensation — Stock Compensation (Topic 718) — Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 120, SEC Staff Announcement at the March 24, 2022 EITF Meeting, and Staff Accounting Bulletin Topic 6.B, Accounting Series Release 280 — General Revision of Regulation S-X: Income or Loss Applicable to Common Stock*	N/A	Effective upon issuance.
ASU 2023-02: *Investments — Equity Method and Joint Ventures (Topic 323) — Accounting for Investments in Tax Credit Structures Using the Proportional Amortization Method*	Yes	**Public:** Fiscal years beginning after Dec. 15, 2023, and interim periods within those fiscal years. **Nonpublic:** Fiscal years beginning after Dec. 15, 2024, and interim periods within those fiscal years.
ASU 2023-01: *Leases (Topic 842): Common Control Arrangements*	Yes	Effective for all entities for fiscal years beginning after Dec. 15, 2023, and interim periods within those fiscal years

**Effective 2023 for nonpublic companies*
***Effective 2023 for public business entities*

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Standards issued in prior years effective 2023 or after

Final ASU	Early adoption	Effective date
ASU 2022-06: *Reference Rate Reform (Topic 848) — Deferral of the Sunset Date of Topic 848*	N/A	Effective upon issuance. Sunset date of Topic 848 is extended to Dec. 31, 2024.*,**
ASU 2022-05: *Financial Services — Insurance (Topic 944) — Transition for Sold Contracts*	Yes	**SEC registrants (excluding entities that qualify as SRCs):** Fiscal years beginning after Dec. 15, 2022, including interim periods within those fiscal years.** **All other entities:** Fiscal years beginning after Dec. 15, 2024, and interim periods beginning in fiscal years beginning after Dece.15, 2025.
ASU 2022-04: *Liabilities — Supplier Finance Programs (Subtopic 405-50) — Disclosures of Supplier Finance Program Obligations*	Yes	Effective for all entities for fiscal years beginning after Dec. 15, 2022.*,**
ASU 2022-03: *Fair Value Measurements (Topic 820) — Fair Value Measurement of Equity Securities Subject to Contractual Sales Restrictions*	Yes	**Public:** Fiscal years beginning after Dec. 15, 2023, and interim periods within those fiscal years. **Nonpublic:** Fiscal years beginning after Dec. 15, 2024, and interim periods within those fiscal years.
ASU 2022-02: *Financial Instruments — Credit Losses (Topic 326) — Troubled Debt Restructurings and Vintage Disclosures*	Yes	**SEC registrants (excluding entities that qualify as SRCs):** Fiscal years beginning after Dec. 15, 2022, including interim periods within those fiscal years.** **All other entities:** Upon adoption of ASU 2016-13.*
ASU 2022-01: *Derivatives and Hedging (Topic 815) — Fair Value Hedging — Portfolio Layer Method*	Yes	**Public:** Fiscal years beginning after Dec. 15, 2022, and interim periods within those fiscal years.** **Nonpublic:** Fiscal years beginning after Dec. 15, 2023, and interim periods within those fiscal years.
ASU 2021-08: *Business Combinations (Topic 805) — Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*	Yes	**Public:** Fiscal years beginning after Dec. 15, 2022, and interim periods within those fiscal years.** **Nonpublic:** Fiscal years beginning after Dec. 15, 2023, and interim periods within those fiscal years.
ASU 2020-11: *Financial Services — Insurance (Topic 944): Effective Date and Early Adoption*	Yes	**SEC registrants (excluding entities that qualify as SRCs):** Fiscal years beginning after Dec. 15, 2022, including interim periods within those fiscal years.** **All other entities:** Fiscal years beginning after Dec. 15, 2024, and interim periods beginning in fiscal years beginning after Dec. 15, 2025.

**Effective 2023 for nonpublic companies*
***Effective 2023 for public business entities*

Final ASU	Early adoption	Effective date
ASU 2020-06: *Debt — Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*	Yes — but no earlier than fiscal years beginning after Dec. 15, 2020	**SEC registrants (excluding entities eligible to be SRCs):** Fiscal years beginning after Dec. 15, 2021, and interim periods within those fiscal years. **All other entities:** Fiscal years beginning after Dec. 15, 2023, and interim periods within those fiscal years.
ASU 2020-03: *Codification Improvements to Financial Instruments*	Yes	See ASU*
ASU 2020-02: *Financial Instruments — Credit Losses (Topic 326) and Leases (Topic 842): Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 119 and Update to SEC Section on Effective Date Related to Accounting Standards Update No. 2016-02, Leases (Topic 842)*	Yes, if ASU 2016-13 adopted	See ASU 2016-13*
ASU 2019-04: *Codification Improvements to Topic 326, Financial Instruments — Credit Losses, Topic 815 Derivatives and Hedging, and Topic 825, Financial Instruments*	Yes	See ASU
ASU 2018-19: *Codification Improvements to Topic 326, Financial Instruments — Credit Losses*	Yes, if ASU 2016-13 adopted	See ASU 2016-13*
ASU 2018-12: *Financial Services — Insurance (Topic 944): Targeted Improvements to the Accounting for Long-Duration Contracts*	Yes	**SEC registrants (excluding entities eligible to be SRCs):** Fiscal years beginning after Dec. 15, 2022, and interim periods within those fiscal years.** **All other entities:** Fiscal years beginning after Dec. 15, 2024, and interim periods beginning after Dec. 15, 2025.
ASU 2016-13: *Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*	Yes, as of fiscal years beginning after Dec. 15, 2018, including interim periods within those fiscal years	**SEC registrants (excluding entities that qualify as SRCs):** Fiscal years beginning after Dec. 15, 2019, including interim periods within those fiscal years. **All other entities:** Fiscal years beginning after Dec. 15, 2022, including interim periods within those fiscal years.*

**Effective 2023 for nonpublic companies*
***Effective 2023 for public business entities*