

December 31, 2021

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1020

Re: Updating EDGAR Filing Requirements; File Number S7-16-21

Dear Ms. Countryman,

On behalf of BrillLiquid, a capital markets advisory boutique, I appreciate the opportunity to comment on proposed amendments to update some of the EDGAR filing requirements (the Proposal). I applaud the ongoing efforts of the Commission to upgrade EDGAR to ensure low-cost access and utility of information for the public while also improving the quality of structured and unstructured disclosures by filers.

The Proposal is not ambitious enough in expanding EDGAR filing requirements to make securities markets more transparent and efficient. Global public capital market development has stumbled since the 1990s. Securities market information is a public good, helping to ensure the integrity of markets and provide participants confidence that markets are fair. The erosion in the quality of financial information and the public capital markets makes the U.S. and global capital markets less effective, does not serve the U.S. or broader society well. It is time for the Commission to take a fresh approach to global capital market development, overcome vested interests, and nudge participants to work effectively for society. Few can argue with the sentiment expressed in the Proposal,

“Advances in information technology, the expanded use of the internet, and upgrades to EDGAR have made it easier for filers to prepare documents electronically and file or submit them on EDGAR. Moreover, documents filed or submitted on EDGAR are more quickly and readily available to the public than paper submissions.”

Summary Recommendations

I recommend the Commission consider revising the Proposal to expand the EDGAR filing requirements to address several glaring information gaps in the capital markets:

- (1) Environmental, Social, and Governance (ESG) Disclosures.
- (2) Private Company Disclosures.
- (3) Foreign Private Issuer Disclosures.

The Proposal	Recommendation for More EDGAR Filings
(1) mandate the electronic filing or submission of most of the documents that are currently permitted electronic submissions under Rule 101(b) of Regulation S-T;	<i>Information in English that is currently disclosed by foreign private issuers under section 12g3-2(b) exemption.</i>
(2) mandate the electronic submission in PDF format of the “glossy” annual report to security holders;	<i>Corporate Responsibility Reports and Sustainability Reports.</i>
(3) mandate the electronic filing of the certification made pursuant to 15 U.S.C. 78l(d) (“Section 12(d) of the Exchange Act”) and 17 CFR 240.12d1-2 (“Exchange Act Rule 12d1-3”) that a security has been approved by an exchange for listing and registration;	<i>Allow qualified foreign private issuers with ADRs trading OTC to list on an exchange without being subject to reporting requirements of the Exchange Act if they are listed on an exchange in country of incorporation, furnish information in English on EDGAR under cover of Form 6-K (item 1 above).</i>
(4) mandate the use of Inline XBRL for the filing of the financial statements and accompanying notes to the financial statements required by Form 11-K; and	
allow for the electronic submission in PDF format of certain foreign language documents.	<i>Foreign private issuers may furnish foreign language documents in PDF and HTML format as exhibits in Form 6-K submissions (item 3 above).</i>

Issuer ESG Disclosures

The Commission should mandate the electronic submission in PDF format of glossy annual reports and reports prepared to address security holder and other stakeholder requests for information about the impact of ESG factors on the filer’s business and financial performance. Filers often prepare ESG disclosures in the form of a Corporate Responsibility Report or a Sustainability Report for the benefit of stakeholders. Investor demand has led to the flourishing of ESG data vendors that parse company disclosures and create ESG ratings. Standard-setting bodies have developed frameworks for ESG disclosures for selected industries. Few U.S. companies have integrated ESG disclosures into their financial reporting.

A lack of agreement about appropriate ESG disclosures has contributed to pervasive so-called greenwashing and SDG-washing. Some issuers are overwhelmed with requests from opportunistic data vendors and index-creators, seeking to capitalize on the ESG data gold rush. Investment management companies are rushing to satisfy the concerns of Main Street investors and institutional investors by incorporating ESG factors into their investment process. Regulators are rightly concerned that investment firms are marketing green funds while only paying lip service to ESG factors in company engagement and voting policies. Nonetheless, investments in legacy index-linked funds, or other investment products, that do not incorporate ESG factors potentially leave investors over-exposed to companies unprepared for the Climate Crisis and the transition to a sustainable economy.

Making EDGAR a centralized repository for non-mandated ESG disclosures will alleviate the burden on market participants of locating information, aid investors, research analysts, and financial media providing critical scrutiny of a company's financial and business performance.

Private Company Disclosures

The Commission plays a critical role in maintaining public trust and confidence in financial institutions, capital markets, and financial media and data providers. A capitalist market economy requires a well-functioning and active IPO market for capital formation. There remains considerable room for improvement in eliminating conflicts of interest, providing transparency, and leveling the playing field for investors in private and public companies.

Equity market structure changes, rising data costs, and infrastructure expenses have made equity trading unprofitable for many firms. Globally, competition, reductions in stock trading commissions, and regulation have caused major listing exchanges and many traditional public market-focused broker-dealers to pivot their business models, scrambling for new sources of revenue and growth. Unregistered offerings and private market transactions are more lucrative than public market transactions for many investment banks. Industry employment has been in a steady decline.

<i>U.S. Financial Industry Employment in Decline</i>		
	<u>2006</u>	<u>2020</u>
Number of FINRA Member Firms:	5,026	3,435
Number of Registered Representatives:	656,381	617,549

Source: FINRA

While the Commission intended to facilitate small business capital formation and IPOs with the Jumpstart Our Business Startups Act (JOBS Act) in 2012, it lit the fuse for the investment flows that would send private company valuations soaring.

In raising the threshold number of shareholders to trigger public company reporting from 500 to 2,000 shareholders of record, the JOBS Act breathed life into a small community of early-stage investors in global technology companies.¹ Companies were suddenly able to stay private for longer and avoid the standards and responsibilities expected of public companies.

There are reportedly almost 1,000 so-called Unicorns, private companies with a valuation of more than \$1 billion, in the world.² All of them have accessed U.S. and international investors in unregistered offerings during the last decade. Some euphoria of late-stage investing has dissipated as inflows to private investment funds from some sovereign wealth funds have slowed. The Unicorns need liquidity. The path to the public markets may be most challenging for companies where the gap between private and public market valuations is pronounced.

¹ Venture capital investor Aileen Lee first coined the term Unicorn company in 2013 and identified 39 U.S. Unicorn companies at the time. See, *Welcome to the Unicorn Club: Learning from Billion-Dollar Startups*.

Available at: <https://techcrunch.com/2013/11/02/welcome-to-the-unicorn-club/>

² According to CB Insights, *The Complete List of Unicorn Companies*, there are 958 Unicorn companies as of December 27, 2021.

Available at: <https://www.cbinsights.com/research-unicorn-companies>

There is a large backlog of Unicorn companies globally planning to go public so large shareholders can finally monetize their paper valuations. Some financial firms seek to provide Unicorn companies access to fresh capital by creating new walled-garden systems to provide market infrastructure, trading, and settlement for investors in private securities of Unicorn companies and newly emerging digital assets.³

In contrast, most listed public companies and their shareholders no longer enjoy the level of liquidity, capital commitment, and equity research coverage provided by traditional broker-dealers as part of an integrated capital markets ecosystem dominated by partnerships and mutual ownership of the NYSE.

A decade ago, after a multi-year wave of shell company activity, the Commission (and other securities market regulators) actively tried to limit backdoor listings (by blank check companies, reverse mergers, and SPACs) of fraudulent and shell companies through various exchange listing rule changes. And yet the front door is frequently left guarded by ineffective gatekeepers.

SPACs have dominated the IPO market in 2020 and 2021. Some private companies have discovered the SPAC structure effective in accessing different pockets of institutional and retail investor demand. With a heady mixture of equity warrants, opaque incentives and fees, rosy projections, and accounting shenanigans for enough participants to believe they will be winners. Public market history has generally not been kind to all believers. The beneficiaries, however, have demonstrated their persistence and a Houdini-like knack for escaping regulatory scrutiny. SPAC sponsors are the new shell company brokers. Information asymmetries and the conflicts of interests can only be alleviated by requiring full and extensive public disclosures and by providing adequate time for critical scrutiny.

The most rapid remedy is for the Commission to slow the wheels of the going public process, require more financial information disclosure by private companies, and create more transparency in unregistered offerings and other private securities transactions. Setting the trigger for public company reporting at 2,000 shareholders of record has not been effective. Shareholders often achieve liquidity and circumvent the threshold limit by creating new LLCs or partnerships to transfer their economic interest. While Form D filings on EDGAR record such unregistered transactions, no company financial information or transaction terms and pricing is included.⁴

*A naïve observer might wonder at the health of the U.S. IPO market
as measured by the number of transactions, the level of underwriting fees, and
the paper valuations of the companies going public.*

³ For example, Nasdaq established Nasdaq Private Market (NPM) in 2013 as a strategic initiative to build the IPO pipeline offering software solutions to private companies, initially with SharesPost, Inc. NPM divested SharesPost and acquired SecondMarket Solutions, Inc. in 2015. In 2020, Forge Global purchased SharesPost. Forge recently announced plans to go public via a merger with Motive Capital, a SPAC. In 2021, Nasdaq announced plans to contribute NPM to a joint venture establishing a trading venue for private companies. See, *Nasdaq, SVB, Citi, Goldman Sachs, and Morgan Stanley Launch New Platform for Trading Private Company Stock*.

Available at: <https://www.nasdaq.com/press-release/nasdaq-svb-citi-goldman-sachs-and-morgan-stanley-launch-new-platform-for-trading>

⁴ For example, Space Exploration Technologies Corp. (also known as, SpaceX) is the mostly highly valued of the U.S. Unicorn companies. Several Form Ds have been filed recently to facilitate the economic transfer of direct or indirect ownership stakes in the company.

See, <https://www.sec.gov/edgar/search/#/category=custom&entityName=SpaceX&forms=D>

Foreign Private Issuer Disclosures

Like IPOs by U.S. companies, U.S. capital markets have been missing IPOs by foreign private issuers. According to CB Insights, there are 471 non-U.S. Unicorn companies. Many seek to go public in the U.S. in a traditional IPO or utilize the SPAC structure like their U.S. counterparts. My recommendation is for the Commission to seek to re-establish the U.S. as the global venue for capital formation by making U.S. capital markets more receptive to foreign private issuers by increasing the universe of companies furnishing information on EDGAR.

None of the world's leading stock exchanges is a global venue for capital formation. Nasdaq has listed some 708 foreign companies, while the NYSE has listed 468. However, companies from Canada, China, Israel, and the U.K. represent more than 60% of the foreign companies listed on U.S. stock exchanges.⁵ Nasdaq has more foreign company listings than the NYSE and the London Stock Exchange, benefitting from the halo effect of its Big Tech company listings, aggressive marketing, lower standards, and listing fees. SPACs, sub-\$50 million IPOs of companies with limited operations, and an active up-listing business where many small companies trading OTC become listed have helped move Nasdaq ahead of its rivals.

It should not surprise that many foreign companies listed on their domestic stock exchange access U.S. investors with ADRs. Many foreign private issuers may choose to have ADRs traded OTC to avoid the costs associated with an additional stock exchange listing and registration with the Commission. Since October 2008, when the SEC permitted the automatic granting of the section 12g3-2 exemption from reporting under the Exchange Act, Depository banks have established an increasing number of unsponsored ADR programs in response to investor demand.

With a U.S. exchange listing, some foreign companies may be concerned that they will inadvertently be subject to U.S. reporting requirements if the trading volume in the U.S. is so high that it is determined to be the primary trading market. With the explosion in the U.S. of ETFs, ETPs, derivatives, high-frequency trading, and the emergence of dark pools, U.S. reported trading volume is no longer a valid indicator of a foreign private issuer's primary trading market.⁶ An issuer should be allowed to designate the stock exchange in its home jurisdiction as the primary exchange regardless of the trading volume.

Some issuers may avoid a listing in the belief it may limit their exposure to U.S. securities laws and litigation. The ruling in February 2020 by the U.S. Supreme Court regarding the potential liability of Toshiba Corp. under Section 10(b) of the Exchange Act may cause some foreign private issuers to reassess their presence in the U.S. capital markets.⁷ The ruling is an opportunity for the Commission to reconsider reporting and disclosure requirements of foreign private issuers and enter into serious dialogue with regulators in other jurisdictions to ensure appropriate and consistent oversight of issuers.⁸ The Commission may also find common ground with other regulators to improve disclosures by private Unicorn companies, particularly in China and India. None want to see companies going public stumble.

⁵ Estimates based upon publicly available data.

⁶ In 2018, the Commission found that all four Depository banks for several years improperly provided ADRs to brokers in pre-release transactions when neither the broker nor its customers had the foreign shares needed to support those new ADRs. Such practices resulted in inflating the total number of a foreign issuer's tradeable securities, which resulted in abusive practices like inappropriate short selling and dividend arbitrage.

⁷ See, *Stoyas v. Toshiba Corp.*, 424 F. Supp. 3d 821.

⁸ See, Speech on International Developments by Keith F. Higgins, former Director, Division of Corporate Finance, provides a valuable survey of the regulation of cross-border offerings in the last four decades. Available at: <https://www.sec.gov/news/speech/international-developments-higgins.html>

Recommendation⁹

(1) Require all foreign private issuers with ADRs trading OTC
to file on EDGAR
certification of their qualification for a section 12g3-2(b) exemption.

AND

(2) Mandate issuers to furnish on EDGAR information in English
with foreign-language originals
in HTML and PDF format.

(3) Allow qualified foreign private issuers to list sponsored ADRs on a U.S. exchange
without requiring registration under the Exchange Act¹⁰

IF

- (i) currently has ADRs trading OTC
- (ii) already listed on an acceptable exchange in the country of its incorporation
- (iii) agrees to furnish information disclosures in English on EDGAR.

Question. *Why this group of ADR companies?*

Answer. *Many U.S. investors already own securities of these companies
either directly or through investment managers.*

⁹ The recommendation will need to be supplemented with changes to other rules and exemptions including those that affect foreign private issuers including (e.g., the fungibility of offerings of a similar class of securities under Rule 144A and the ability to register public offerings), and FINRA member firms (e.g., Rule 15a-6 covering registration of foreign research analysts and distribution of research in the U.S.). None of these are insurmountable.

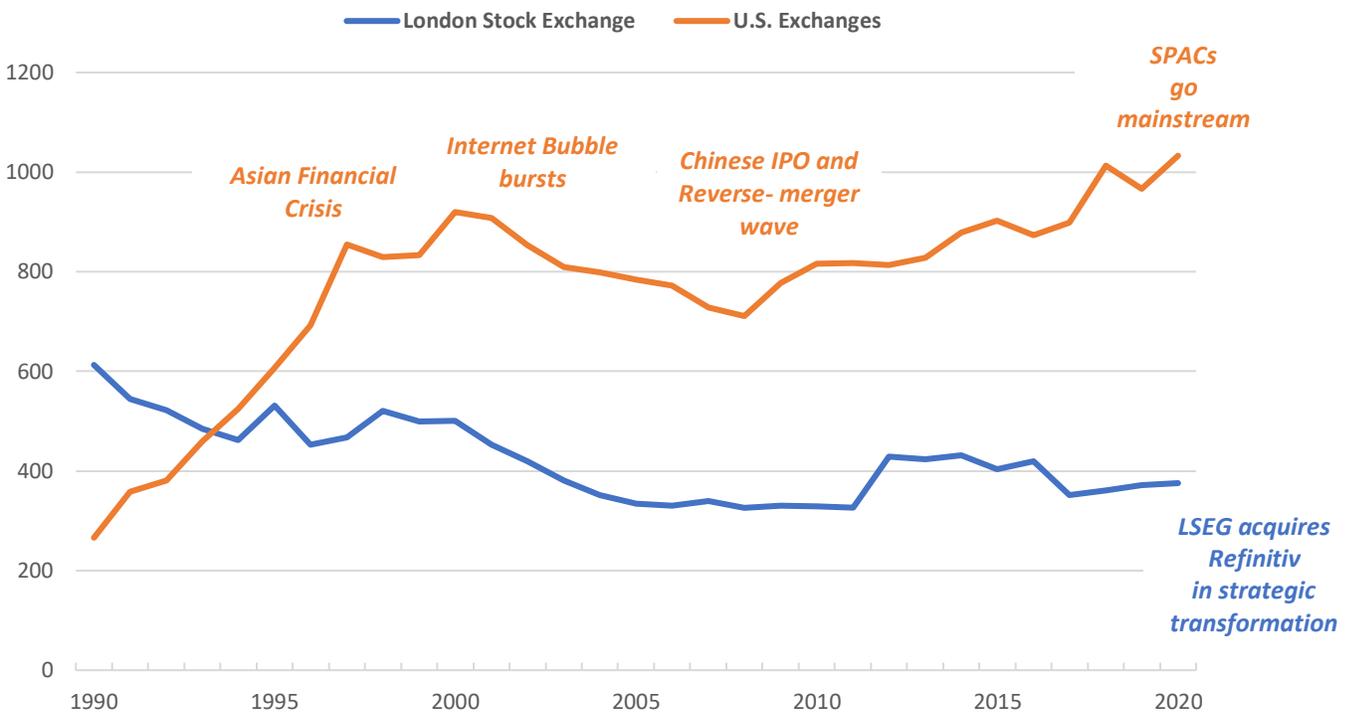
¹⁰ The Commission will need to consider whether the current NYSE and Nasdaq listing standards are appropriate for foreign private issuers listed on a domestic stock exchange and the potential to introduce nominal fees for such issuers. Listing fees for U.S. companies, and foreign private issuers not listed on an acceptable foreign stock exchange could be reevaluated along with equity market structure changes. For example, eliminating unlisted trading privileges (UTP) for foreign private issuers and U.S. companies may increase liquidity for company shares and encourage the listing exchanges to dedicate more resources to issuers and consider how to improve the quality of markets in each company's securities.

With the recommended changes, the U.S. will see more cross-border public offerings of securities and provide Main Street investors access to a more diversified pool of attractive investment opportunities.¹¹ The Commission will need to agree about future disclosure, and other requirements, with Chinese regulators for all Chinese companies seeking to go public in the U.S. and existing companies with ADRs listed in the U.S. or trading OTC, as these companies are often not listed on an exchange in China.

More importantly, making ESG disclosures available for a broad range of global companies, from developed countries and developing countries, will allow market participants to manage the transition risks to a sustainable economy. Access to information will make markets more efficient by lowering the burden for U.S. investors and intermediaries to evaluate opportunities. U.S. capital markets will become more receptive again to foreign private issuers. Foreign company listings on U.S. exchanges first exceeded those on the London Stock Exchange in the mid-1990s, but growth has stalled.

Figure 1.1

Number of Foreign Company Listings on U.S. Stock Exchanges vs. London Stock Exchange, 1990–2020



Source: BrillLiquid, World Federation of Exchanges, London Stock Exchange Group (LSEG).

¹¹ The Commission may consider new disclosure procedures for IPOs and other public offerings of securities working in conjunction with FINRA member firms and foreign regulators to tailor capital market development for the mutual benefit and needs of U.S. and foreign market participants. The current MJDS process does not factor in different trading and settlement processes in the U.S. and Canada, creating logistical challenges for underwriters.

Table 1.1*Number of OTC ADRs for Selected Countries Compared to U.S. and Domestic Exchange Listings*

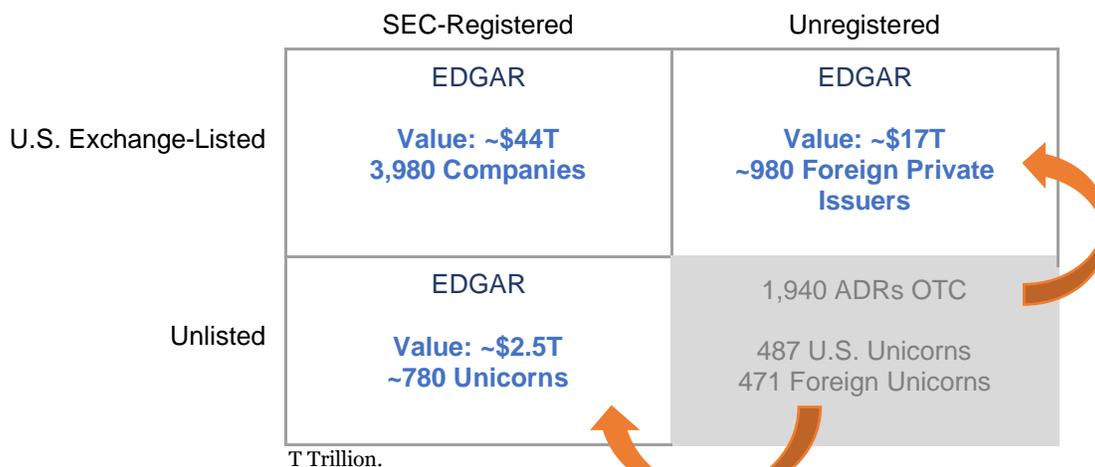
	Country	OTC ADRs	U.S. Listed ADRs+Shares	Number of Domestic Listings	U.S. Listed as Percent of Domestic	Total U.S. Listed+OTC as Percent of Domestic	
<i>OTC ADRs provide a snapshot of the developed markets and companies important to U.S. investors and where additional English language information would be valuable.</i>	Japan	319	10	3,754	0%	9%	
	United Kingdom	183	100	1,979	5%	14%	
	Australia	131	16	1,902	1%	8%	
	Germany	116	25	438	6%	32%	
	France	89	17	415	4%	26%	
	Brazil	55	30	345	9%	25%	
	South Africa	52	7	264	3%	22%	
	Switzerland	52	28	236	12%	34%	
	Singapore	44	29	459	6%	16%	
	Indonesia	38	1	713	0%	5%	
	Thailand	35	-	743	0%	5%	
	Spain	34	4	2,711	0%	1%	
	<i>Making global capital markets more inclusive and ESG disclosures widely available will help market participants solve the climate crisis and address ESG issues sooner and more efficiently.</i>	Philippines	28	1	268	0%	11%
		Turkey	24	2	371	1%	7%
		Belgium	21	6	109	6%	25%
Austria		20	-	68	0%	29%	
New Zealand		19	-	122	0%	16%	
Poland		19	-	782	0%	2%	
Greece		16	34	171	20%	29%	
Russia		14	3	213	1%	8%	
Mexico		12	19	140	14%	22%	
Israel		7	117	426	27%	29%	
Luxembourg		7	15	29	52%	76%	
Colombia		6	3	65	5%	14%	
Malaysia		6	-	927	0%	1%	
Lebanon		5	-	10	0%	50%	
<i>Some 19 countries with OTC ADRs have no companies listed on the NYSE or Nasdaq. Companies in these countries may choose to access other international exchanges instead or are underserved.</i>		India	4	11	1,958	1%	1%
	Egypt	3	-	240	0%	1%	
	Hungary	3	-	45	0%	7%	
	Czech Republic	2	-	20	0%	10%	
	United Arab Emirates	2	-	130	0%	2%	
	Chile	1	8	194	4%	5%	
	Jordan	1	-	179	0%	1%	
	Kazakhstan	1	-	94	0%	1%	
	Korea	1	10	2,318	0%	0%	
	Namibia	1	-	13	0%	8%	
	Peru	1	3	199	2%	2%	
	Romania	1	-	81	0%	1%	
	Taiwan	1	11	871	1%	1%	
	Canada	-	225	3,344	7%	7%	
	Costa Rica	-	1	10	10%	10%	

Foreign companies and regulators with well-developed domestic capital markets would appreciate a low-cost additional listing on a really globally-minded venue if the U.S. regulatory burden does not increase significantly.

Source: BrillLiquid, World Federation of Exchanges, BNY Mellon, Nasdaq, Euronext.

Close the Information Gap

It is time to move information from the shadows of private and OTC markets into EDGAR and the public domain. The recommendations to expand company coverage in EDGAR could increase the number of filers and the total equity market capitalization of filers by 44%.¹² Company data coverage would include most of the largest companies in the world. Most of the low-hanging fruit is the foreign private issuers with OTC ADRs. An exception is India, which has 53 Unicorn companies far outpacing the number of Indian companies with a U.S. listing or OTC ADRs. Protecting investors means narrowing the information gaps between Unicorn companies and public companies.



Source: BrillLiquid, CB Insights, BNY Mellon, CSRP.

Information is often difficult to access efficiently on individual corporate websites.

Information provided by third-party data providers is expensive or available only as a subscription and often incomplete or contains errors.

Internet and social media platforms are rife with misinformation and investment opinions of unregistered entities and persons, exempt investment advisers, and company insiders.

The quality and breadth of international company coverage by many financial newspapers has declined because of the cost of accessing information and maintaining international bureaus.

Many public companies purchase newswire distribution only for local or regional markets for press releases and other financial disclosures.

It is impossible to overstate the myriad public benefits of requiring additional information on EDGAR about so many companies from different countries.¹³

¹² For illustrative purposes only, Chinese issuers with OTC ADRs and Chinese Unicorns, Pink Sheet and Grey Market companies with ADRs, and companies without publicly available quotes are assumed to remain unlisted and not registered with the Securities and Exchange Commission (SEC).

¹³ For example, adding ADRs (and the shares they represent) currently trading OTC to the Official List of 13(f) securities will significantly improve transparency in the institutional ownership of the world's largest public companies.

Request for Comments

For ease of reference, selected requests for comments in the Proposal are repeated in boldface below.

Would filers, investors, and other interested parties realize any benefits if we required the affected documents (other than annual reports on Form 11-K) to be submitted in a structured data language, such as a custom XML-based data language, rather than in ASCII or HTML (or, for the foreign language documents and exchange certifications, in PDF)?

Making any foreign language documents and their translations (or English summaries) available in HTML will facilitate browser-based translation tools. Increased numbers of documents for comparison will allow creators of translation tools to fine-tune and improve translation of legal, financial, and business terminology over time.

Please explain why or why not. If so, are there certain documents in particular that would provide such benefits to filers, investors, and other interested parties if submitted in a structured data language? What costs would these parties incur if we required such documents to be submitted using a structured data language?

All financial market participants would benefit if structured data language could include a field for the description of the items submitted under cover Form 6-K. Instructions for Form 6-K provide examples for information to be disclosed which may be modified to be suitable to field descriptions. Similar fields would be welcome for EDGAR submissions on Form 8-K. Adding structured data language to Form 144 may make information included more widely available and comparable with other filings by insiders (e.g., Form 4).

Searching EDGAR filings for Form 6-K and Form 8-K can be time-consuming unless very specific search criteria are included:

<https://www.sec.gov/edgar/search/#/dateRange=1y&category=custom&forms=6-K>

<https://www.sec.gov/edgar/search/#/dateRange=1y&category=custom&forms=8-K>

Would filers respond to the proposed mandate to file “glossy” annual reports to security holders on EDGAR by changing how they present the information in those reports? If so, please explain how, including whether or not investors or other market participants would realize costs or benefits as a result of any such changes.

I do not believe filers would change how they present the information in the glossy annual reports.

Would the proposed amendments to mandate the electronic submission in PDF format of the “glossy” annual report to security holders impose additional PRA burden on existing EDGAR filers not encompassed by existing burden estimates? If so, please explain what additional burden would be imposed.

I do not believe the electronic submission in PDF format of the glossy report and Sustainability Report or Corporate Responsibility Report will impose an additional PRA burden on existing EDGAR filers. For non-filers, there will be an additional PRA burden to furnish disclosures to the Commission on EDGAR. The additional burden will be minimal for most companies as accessing EDGAR is the only incremental step. The issuers are already required to make the information available publicly in an electronic format and many include the information on their own corporate websites. Foreign language documents are also readily available as they are filed with the stock exchange or regulators in the local jurisdiction and may also be made available on the corporate website.

I appreciate the opportunity to submit comments to the Commission on the Proposal.¹⁴

I recommend the Commission consider leveraging the capabilities of EDGAR to expand its current Proposal and address some glaring capital market failures.

I conclude with the following question paraphrasing a famous quote,

“If not EDGAR, who? If not now, when?”

Sincerely,

A handwritten signature in cursive script that reads "A. MacInnes".

Andrew MacInnes

Managing Director

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