Werner, Digilova and Carroll in Law360: 8 Tips On Mining Disclosures For Foreign Issuers

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Haynes Boone lawyers Rick Werner, Alla Digilova and Thomas Carroll authored an article in *Law360* on navigating new mining property disclosure rules introduced by the U.S. Securities and Exchange Commission.

Read an excerpt below:

In 2018, the U.S. Securities and Exchange Commission introduced new disclosure requirements applicable to issuers for whom mining operations are material to their business or financial condition.

Previously, mining issuers were subject to the disclosure regime set forth in Item 102 of Regulation S-K and Industry Guide 7.

The regulatory uncertainty created by these overlapping regimes led to a significant amount of staff interpretive guidance through the comment letter process.

The 2018 rules were intended to streamline disclosure requirements and enhance transparency, thereby providing investors with a more comprehensive understanding of an issuer's mining properties.

Among other things, the SEC rescinded decades-old Industry Guide 7 and consolidated mining property disclosure requirements by relocating them to a new subpart of Regulation S-K — Subpart 1300.

The new rules applied for the first fiscal year beginning on or after Jan. 1, 2021.

The requirements of Subpart 1300 apply to foreign issuers when filing Form 20-F, either as a registration statement or as an annual report, as well as when making other filings, such as registration statements on Form F-1 or Form F-4.

Since Subpart 1300 became effective, the SEC has issued over 80 comment letters relating to its requirements, 36 of which were issued to foreign private issuers.

This may suggest that issuers have struggled to adapt to the regime, but it also reflects the SEC's focus on the accuracy of disclosure.

In an announcement of enforcement actions from the 2022 fiscal year, the SEC declared, "Public company disclosure is the bedrock of our securities markets," and "[t]he SEC places a high priority on pursuing issuers or their employees who make materially inaccurate disclosures."

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It seems likely that the SEC's emphasis on accurate disclosures will lead to continued scrutiny of issuers' Subpart 1300 filings.

To read the full article in *Law360*, click here.

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