



## Securities Quarterly Update

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*Welcome to the spring edition of Securities Quarterly Update, a publication that provides updates and guidance on securities regulatory and compliance issues. In this edition, we discuss the potential effects of Russia's invasion of Ukraine on public companies, including the disclosures that may be required of them under the U.S. securities laws.*

### Introduction

On February 24, 2022, Russia launched an invasion of Ukraine. The war in Ukraine remains ongoing and has had consequences across the globe as the United States and other Western nations have applied sanctions designed to curb Russian aggression and cause it to end its incursion into Ukraine. Public outcry by individuals and organizations over the invasion of Ukraine has also been a driving force that has caused many companies to cease or limit operations in Russia entirely. Public companies must be cognizant of these developments and, among other things, the disclosures that may be required of them under the U.S. securities laws.

### Operations and Customers in Russia

Public companies with operations in Russia should be mindful of the impact that the war in Ukraine, and the public perception of companies operating in Russia, may have on their business, financial condition, and results of operations. Public perception of companies that have remained in Russia remains negative and it has been [reported](#) that some companies have seen a drop in share price for maintaining ties with Russia. Additionally, companies with customers or suppliers in Ukraine and Russia could be negatively impacted by any inability to provide goods and services to their customers, among other considerations. These factors should be considered by a public company in making its public disclosures with the SEC and investors.

### Risk Factors

SEC rules require public companies to disclose risk factors, or the material factors that make an investment in the company or the offering speculative or risky. Companies should consider the conflict in Ukraine and the resultant tension between the United States and Russia in drafting and revising their risk factors to address material risks that these events, and the actions taken by the United States, Russia, and their respective allies as a result, pose to their business.

Considerations in risk factors disclosure may include whether the company has operations in Russia or Ukraine, whether the company imports products from or exports products to Russia, actual and potential supply chain disruptions, increasing prices of fuel and raw materials, cybersecurity, and any effect on vendors and suppliers. In particular, public companies have recently revised their risk factors regarding catastrophic events, terrorism, and war to include disclosures about the conflict in Ukraine, as well as their risk factors regarding cybersecurity. Risk factor disclosures are expected to be specific to a company's circumstances.

Furthermore, the SEC has recently issued comments on public filings indicating that companies that operate in industries that may be particularly susceptible to material impacts from the current geopolitical events should bolster disclosures in their prospectus summary and in discussion regarding the markets in which the companies operate.

## MD&A

Public companies should also consider updating the management's discussion and analysis of financial condition and results of operations, or MD&A, section of their public filings. SEC rules require that public companies provide material information relevant to an assessment of the financial condition and results of operations of the company, including an evaluation of the amounts and certainty of cash flows from operations and from outside sources. Among other things, the discussion and analysis must focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.

In light of these rules and the war in Ukraine, companies should deliberate over revising MD&A to include disclosures regarding any impact on the companies' present or future financial condition and results of operations, including on liquidity and capital resources. For example, one company included the following in its MD&A:

"We continue to manage our costs carefully and execute strategies for cash preservation, protecting our employee base and managing supply chain price increases. The Russia-Ukraine war has had little direct impact on our business, however, the uncertainty and ripple effects created by it, may have unknown indirect impacts."

As an additional example, another public company disclosed the following in its MD&A:

"As a result of the war in Ukraine, we made the decision to temporarily close our stores and pause commercial activities in Russia and Belarus as of March 7, 2022. Additionally, while we have no direct operations in Ukraine, virtually all of our wholesale customers and franchisees in Ukraine have closed their stores, which has resulted in a reduction in shipments to these customers and canceled orders. Approximately 2% of our revenue in 2021 was generated in Russia, Belarus and Ukraine. As such, we expect the war in Ukraine will have a negative impact

on our revenue and net income in 2022. ... The war has also led to, and may lead to further, broader macroeconomic implications, including the recent weakening of the euro against the United States dollar, increases in fuel prices and volatility in the financial markets, as well as a decline in consumer spending. There is significant uncertainty regarding the extent to which the war and its broader macroeconomic implications, including the potential impacts to the broader European market, will impact our business, financial condition and results of operations in 2022."

In addition, accounting implications, such as potential write-downs or impairments, need to be evaluated.

## ESG

These issues should also be considered under the larger umbrella of the company's environmental, social, and governance (ESG) program. Companies should be cognizant of potential scrutiny and claims if their actions with regard to Russia and in similar situations are deemed to be out of alignment with their public statements regarding ESG goals.

## Cybersecurity Considerations

On March 9, 2022, the SEC proposed rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and cybersecurity incident reporting by public companies. According to an SEC spokesperson, although these proposals had been under consideration for some time, the crisis in Ukraine had given them a "special relevance." Although the new cybersecurity rules are not yet finalized, companies should be aware that the SEC may take an increased interest in cybersecurity disclosures in light of the war in Ukraine. To read more about the proposed rules, please see our [more detailed update on this topic](#).

## FOR MORE INFORMATION

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- [Q1 | Winter 2022](#)
- [Q4 | Fall 2021](#)
- [Q3 | Summer 2021](#)
- [Q2 | Spring 2021](#)

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