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## NAVIGATING THE SEC'S NEW CYBERSECURITY DISCLOSURE REGIME

*The environment for cybersecurity regulation and enforcement has never been as intense. The SEC is ramping up its oversight of public company cybersecurity, including through a recent enforcement action against a Chief Information Security Officer, and by issuing a sweeping set of new Final Rules governing disclosure of material cybersecurity incidents. Compliance dates under the Final Rules are here, and companies may be grappling with major questions, including: What is a “cybersecurity incident”? What is “material”? To what extent will the SEC be seeking to hold individuals liable for cyber violations and not solely their employers? How should companies and their personnel implement the requirements of the Final Rules and prepare for related risks? This article provides guidance on each of these questions and outlines steps companies can take from a compliance perspective to prepare for and address cybersecurity incidents.*

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### THE ENVIRONMENT FOR CYBERSECURITY REGULATION

The environment for cybersecurity regulation has never been as intense. Markets depend on electronic systems subject to attack. The workforce is increasingly reliant on remote technology in light of the COVID-19 pandemic. Cyberattacks continue unabated across the globe. The Ukraine war has heated up global worries about nation-state attacks. As recently as September of this year, a large-scale cyber-attack on MGM Resorts in Las Vegas caused losses upwards of \$100 million. In May 2021, a ransomware attack on the Colonial Pipeline

resulted in a days-long shutdown of a crucial pipeline. In December 2020, an ongoing, years-long malware attack on SolarWinds' Orion business software was disclosed; the attack affected hundreds of companies using its software. Fallout from these attacks still impacts government and corporate mindsets.

The U.S. Securities and Exchange Commission has stepped in to regulate this turbulent and fast-evolving environment. On July 26, the SEC finalized a sweeping set of rules governing cybersecurity. The Final Rules require public companies (registrants) and foreign private issuers to disclose material cybersecurity

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