

SEC Cyber Rules are now Effective

We believe these will be useful disclosures for insurers

The SEC's new rules requiring enhanced disclosures on cyber incidents and risk management strategies are effective as of December 18. **While the rules are designed chiefly as a benefit to investors, we believe these disclosures will be useful for insurers both as potential loss indicators and to bring perspectives into their underwriting decision making.**

Annually, companies will be required to disclose cybersecurity risk management, strategy, and governance. As part of these disclosures companies must discuss management's role in assessing and managing material cybersecurity risks and the Board's oversight functions.

We plan to monitor filings as we believe they will provide valuable insights for property-casualty insurers.

We believe these disclosures are significant as they will force companies to reassess their capabilities. If they are not up to speed, we expect they will expand their capabilities rather than admit to investors (and potential threat vectors) that they are deficient. We believe these disclosures will be a valuable source of information that will add to the tools insurers have to underwrite cyber policies. As these disclosures will be required on Form 10-Ks the bulk of the reports will become available in February.

The rules also require companies to report "material" cybersecurity incidents on Form 8-K within four days after determining that the incident is material. (Note, this is not four days after the incident, but rather four days after determining the effect on the company could be material). Under the rules, companies will be required to describe the nature, scope, and timing of the incident, as well as the likely impact on the company's financial condition and results of operations.

Without doubt companies will have challenges gathering information among various internal departments and meeting the time requirements while events could possibly still be unfolding. Plus, as with all SEC disclosures, companies will have to grapple with the question of what material is. And since these requirements are new and not particularly prescriptive, companies will be on their own to strike a balance between saying too much and too little.

We believe these incident filings will provide valuable information to insurers not just in identifying potential cyber claims, but in cautioning about future class action filings from individuals who assert that companies have not been protective of their personal

identifiable information (PII) and from shareholders claiming false or misleading disclosures.

We do not know how many filings to expect, but in the last three months we have noted four major company 8-Ks with information that would meet the new requirements: Clorox Company, Caesars Entertainment, MGM Resorts, and Mr. Cooper Group. These companies have had multiple filings to clarify developments and numerous lawsuits have been filed (quickly) by plaintiffs seeking class action status.
