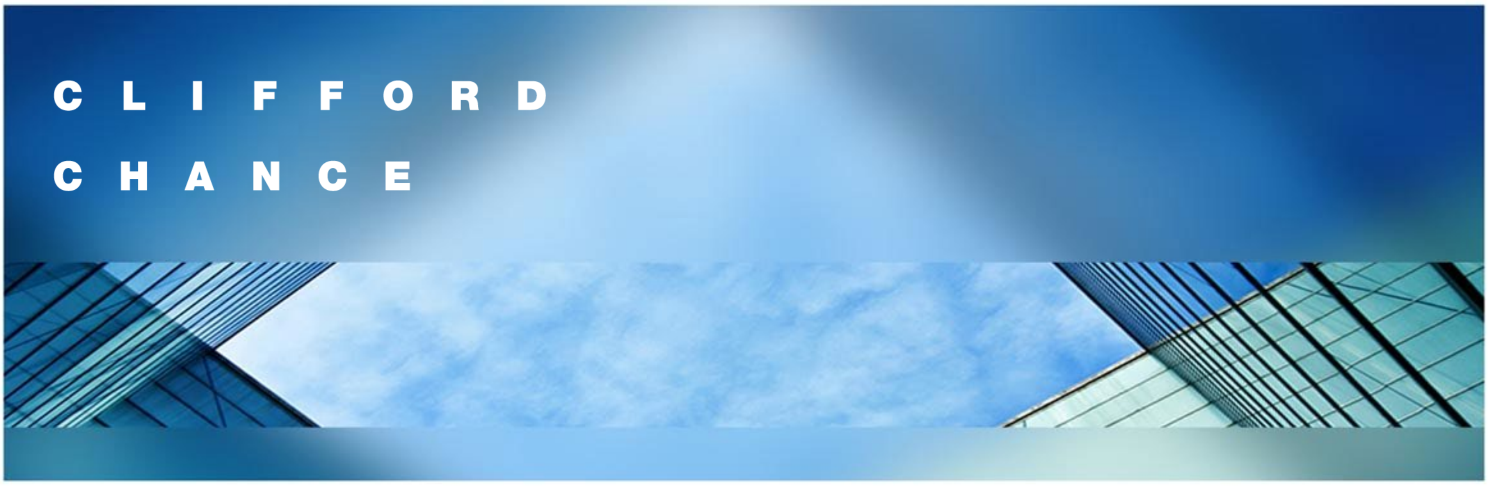

PERIODIC REPORTING FOR HIGH YIELD ISSUERS: POINTS TO CONSIDER FOR FIRST-TIMERS AND OLD HANDS (2025 UPDATE)

Periodic reporting to the market is a feature of all high yield bond issuances and is designed to ensure accountability and transparency between issuers and their (often dispersed) noteholders. As the 2025 annual reporting season gets underway, we examine some key legal and practical aspects of preparing periodic reports for high yield bond issuers, including the key disclosure trends that European issuers should consider in preparing their annual reports for the 2024 fiscal year.

Key issues

- The Basic Requirements
- What is Included in Reporting Covenants
- Additional Reporting Requirements
- Key Disclosure Considerations
- Conclusion

The requirements, which derive and are adapted from disclosure requirements for companies with securities registered with the U.S. Securities and Exchange Commission, generally require issuers to provide certain financial and non-financial information relating to the business to investors on an annual and a quarterly (or sometimes, a semi-annual) basis and, otherwise, upon the occurrence of material events.

Periodic reporting takes on additional importance where, as is common for high yield bond issuances, the issuer is not a public company or does not otherwise make periodic filings and disclosure to equity investors, as the periodic reports delivered under the bond covenants (and the accompanying investor calls) become the primary source of information to investors about the business and financial condition of the issuer. First-time bond issuers may not focus on this requirement during the offering process, as high yield bond issuance processes are often extremely demanding, with multiple workstreams requiring the time and attention of the issuer's management team.

THE BASIC REQUIREMENTS

Reporting covenants customarily require the issuer to provide regular and detailed reports on its financial performance, ongoing changes to its business (including risk factors or significant acquisitions/dispositions, which may include pro forma financial statements and/or acquired company financial statements, if reasonably available) and other significant changes to the issuer (e.g., changes in auditors or board members).

The reporting covenant serves the function of ensuring continuing compliance with U.S. rules. Rule 144A(d)(4), which is a condition of the Rule 144A registration exemption for sales of securities to U.S. institutional investors, requires, as a condition of continuing eligibility for the exemption, that basic information about the issuer continues to be available to investors. It also ensures that investors have sufficient information about the issuer to continue to trade the securities. As European bonds are typically listed on an exchange, the reporting covenant should ensure that the issuer meets the disclosure requirements of such exchange, although high yield reporting requirements generally go beyond the basic requirements of the exchange.

The reporting covenant is usually one of the few affirmative covenants of the issuer, alongside the standard high yield incurrence covenants, and provides investors with a window into the overall health of the group.

WHAT IS INCLUDED IN REPORTING COVENANTS

The reporting covenants in high yield notes indentures include several key requirements. We note that every reporting covenant is slightly different, so care should be taken to review the covenant and ensure compliance.

1. **Annual Reports**: Issuers must deliver annual reports within a certain number of days after the end of their fiscal year (typically 90 or 120 days for European issuers). These reports should include audited financials, pro forma financials for material acquisitions/dispositions/restructurings (and sometimes acquired company financial statements, if available), and management's discussion and analysis of the issuer's financial condition and results of operations (MD&A) (also referred to as an operating and financial review (OFR)), plus a description of the business, management and shareholders, and sometimes material affiliate transactions and material debt instruments. Some covenants (although less commonly in more recent offerings) will require the disclosure to be substantially similar in scope to similar disclosure sections in the offering memorandum for the offering. In either case, whether required or not, we usually advise issuers to prepare their first report using the original offering memorandum for the deal as a starting point and adapting it from there.
2. **Quarterly (or Semi-annual) Reports**: Issuers are required to deliver quarterly reports within a certain number of days (typically 60 days) after the end of each quarter. These reports should contain unaudited condensed financial statements, pro forma financials for material acquisitions/dispositions/restructurings, and a review of financial performance and material developments in the business. For some issuers (e.g., issuers that may already have publicly listed equity in a jurisdiction that does not require quarterly reporting, such as the United Kingdom) only semi-annual reporting may be required, although these issuers may still sometimes be required to give a shortened list of key metrics (such as EBITDA) to the market on a quarterly basis.
3. **Event-driven Reports**: Prompt reports are usually required following any material acquisitions, dispositions, restructurings, senior executive changes, auditor changes, or other significant events that the issuer otherwise announces publicly.

All financial statements must be prepared in accordance with GAAP/IFRS, ensuring consistency and comparability with previously published financial information and must be made available on the issuer's corporate website[1] and, if required, provided to the relevant stock exchange.

ADDITIONAL REPORTING REQUIREMENTS

Issuers should also consider the following additional aspects when complying with reporting covenants:

- **Conference Call Requirements**: Some indentures also require a conference call to take place within a certain number of days (or promptly) following the release of periodic reports. This conference call typically needs to be public and available to all noteholders to join. Even if there is no explicit requirement in the reporting covenant to host a conference call, market practice has developed such that bond investors will expect these calls to occur within a reasonable time period of the report being available.
- **Significant Unrestricted Subsidiaries**: If any of the issuer's subsidiaries are unrestricted subsidiaries and are considered to be "significant" subsidiaries under the terms of the indenture, additional financial information for such subsidiaries must also be included, which may entail detailed presentations or standalone financial statements for these subsidiaries.
- **Stock Exchange Requirements for Public Companies**: If the issuer's equity securities are listed on a recognized stock exchange, they must comply with the admission and disclosure standards of that exchange. In such a case, to the extent that such public company applies the rules of its listing, it can often disregard any additional or supplementary requirements included in a reporting covenant.
- **Furnishment to Trustee**: Typically, posting the required reporting information to the issuer's website is sufficient to ensure compliance with all requirements to provide the reporting information to the bond trustee, but some indentures require the reporting information also to be sent directly to the trustee.
- **Compliance Certificates**: In addition to the reporting requirements, bond issuers must provide an annual compliance certificate to the trustee that confirms that no defaults or events of default occurred over the previous year, or otherwise provide a detailed description of such defaults and what the issuer has done to rectify or cure such defaults. The timing for this is often the same for which the annual report is delivered (i.e., 90 or 120 days following the end of the year).

Practice Tip

- We frequently receive the question of whether reporting information must be posted publicly or if it can be included on a password-protected website (or similar). While not a focus of this article, we note that if bonds are listed on an EU exchange and subject to the Market Abuse Regulation, the bonds should be posted on a website that is generally publicly available. If this is not the case, we still consider that making the reporting publicly available (and not just to existing and potential investors) is best practice wherever possible, and often administratively less complex for issuers.

KEY DISCLOSURE CONSIDERATIONS

In addition to furnishing bondholders with their audited financial statements, issuers must include a detailed review of their business and financial performance in their annual report. This typically involves providing disclosures on risk factors, MD&A and key aspects of the business such as strategy and material developments like major refinancings and acquisitions.

[1] See AFME, "AFME Recommended Market Practices, Ongoing Reporting Obligations by Issuers of Non-Investment Grade Debt Securities" (2020), https://www.afme.eu/Portals/0/DispatchFeaturedImages/HY%20Ongoing%20Rep%20guidelines%20-%20formerly%20(Disc%20guidelines)%20-%20Updated%20version%202020-2.pdf.

We note that although bond issuer reporting does sometimes tend to be lighter than equity issuer reporting and ongoing reporting disclosure is often lighter than the disclosure in an offering memorandum for the issuance that is reviewed by counsel, we would always recommend that issuers focus time and effort on their disclosure to bondholders, and make efforts to ensure that it is both up to date (i.e., not simply a rote recitation of what was in the offering memorandum year after year) from a company perspective as well as a wider macro perspective.

Below are some of the key areas and trends that issuers should consider in preparing the disclosure sections of their 2024 fiscal year annual reports (and for quarterly updates, as necessary):

1. **Operational Metrics and KPIs**: The operational metrics used by an issuer to assess its performance are key areas of focus for high yield investors and issuers should ensure that these metrics are carefully reviewed and updated in their annual report. In particular, these metrics should be meaningfully described, including how they are calculated and, if applicable, any relevant reconciliations to the closely related GAAP/IFRS measures. It is important for issuers to ensure consistency in reporting their operational metrics. The metrics provided to investors in the offering documents, periodic reports and other investor relations materials, such as earnings presentations, should all be aligned. In addition, metrics previously disclosed to investors should not be excluded in current reports because they are no longer favorable to the issuer or cast the issuer's operational performance in a negative light; investors will expect to see these metrics year-over-year and will build their models based on them. If they need to be changed or removed, be ready for pushback and include an explanation.
2. **Risk Factors**:
    i. **Cybersecurity**: Companies across all sectors face heightened risk of cybersecurity breaches, including cyberattacks and other cyber-related disruptions, that could lead to business interruptions, data loss and, in some cases, regulatory fines. For example, in July 2024, an IT outage at Crowdstrike, a U.S. IT firm, affected millions of Microsoft Windows devices and led to widespread service disruptions across several industries globally. Issuers should therefore consider including cybersecurity disclosure in their annual report to the extent not already included and periodically review its scope. Such disclosure should include a narrative description of the nature of cybersecurity risks the company is exposed to as well as the company's internal processes and controls for preventing or mitigating such risks. Existing cybersecurity risk factors should also be reviewed and updated to reflect the issuer's current circumstances and any new risks that have appeared since the previous disclosure. If the issuer has had any cyber-related incident recently, a description of such incident, including related remedial actions, should also be included in the risk factor disclosure. Disclosures around cybersecurity incidents should be balanced to provide adequate information to investors

without revealing critical information about the issuer's cybersecurity controls that would compromise its ability to protect its business against future cyberattacks.

ii. **Climate Change**: The current pushback against ESG-related measures is expected to continue in the coming years, especially with the new Trump Administration expected to pare back ESG-related measures in the United States. However, climate change and sustainability remain key areas of interest for many high yield investors and, even in the absence of regulatory-mandated climate disclosures, issuers should consider including (or retaining and updating) climate-related disclosures in their 2024 annual reports. Such disclosures should address both the direct and indirect impacts of climate change on the issuer and its business operations, including potential physical impacts from weather events and climate-related disasters such as hurricanes and flooding. Issuers should also address the financial aspects of climate change in their MD&A, including such climate or sustainability trends that might impact their business (e.g., how greenhouse gas emissions in their operations might impact market demand for their products as well as the impact of compliance costs relating to climate-related regulatory actions).

iii. **Artificial Intelligence**: Companies across different sectors are increasingly deploying and using artificial intelligence ("AI") technologies to enhance various aspects of their operations, including research and development, data analytics and marketing. In addition to the opportunities presented by AI, AI technologies come with inherent risks that should be carefully managed and disclosed to investors. In preparing annual reports, issuers should carefully review their AI capabilities and processes, including the specific ways in which they currently deploy or intend to deploy AI, and identify the AI-related risks and trends that are impacting or might materially affect their business in the future. Risks associated with AI should be disclosed as a risk factor, while AI-related trends and their implication for the issuer, depending on the nature of the issuer's business, including potential impacts on strategy, competition, product development, product demand and human capital resources, should be discussed as part of the MD&A. Issuers should ensure that their AI-related disclosures are balanced and not exaggerated to mislead investors about the issuer's AI-capabilities to avoid "AI washing."

3. **Changes to the Business**:

i. Geopolitical Tensions: The new Trump administration has expressed its willingness to leverage trade tariffs in pursuit of both trade- and non trade-related policy goals which will likely escalate geopolitical tensions between the United States and several countries. Since its inauguration on January 20, 2024, the Trump Administration has threatened tariffs against

China, Canada, Colombia, Denmark/Greenland, the European Union, Mexico, Panama and even NATO states for various reasons, including refusal to invest in border security, in the case of Canada, and compelling NATO states to increase their defense spending. On February 1, 2025, the Trump Administration backed its threats with action, announcing an additional 10% tariff on Chinese goods that came into effect on February 4, 2025. The Trump Administration also threatened to impose an additional 25% tariff on U.S. imports from Canada (10% for Canadian energy resources) and Mexico starting from February 4, 2025, but ultimately suspended the implementation before it came into effect. Furthermore, on February 10, 2025, President Trump signed proclamations imposing a 25% tariff on all steel and aluminum imports to the United States (ending prior exemptions for countries including Canada and the European Union) that is due to come into effect in early March. China has since announced retaliatory measures, including imposing a 15% tariff on U.S. coal and liquefied natural gas products and a 10% tariff on U.S. crude oil, agricultural machinery and large-engine cars, with effect from February 10, 2025. In addition, China imposed export restrictions on certain minerals that are critical for military equipment, electronics and solar panels, including tungsten, and commenced regulatory action against several U.S. companies, including an anti-trust investigation into Google. Issuers, especially those with international operations, should assess the potential impacts of U.S. tariffs and counter tariffs by affected countries, and the associated trade/geopolitical tensions on their business, and update with appropriate disclosures to reflect the changing circumstances. Issuers should also continue to address the impact of international conflicts, including the war between Russia and Ukraine, the conflict between Israel and Hamas, the tension between Israel and Iran and any related sanctions by the United States, the United Kingdom, and the European Union in their annual report disclosures.

ii. **Risk Mitigation**: While annual report disclosure should generally avoid including a company's mitigation efforts in its risk factors section, any new efforts to mitigate against a company's key risks, including newly identified risks (such as those discussed above), should be included in the description of the business or discussion of the financial results.

CONCLUSION

Complying with high yield bond reporting covenants involves several practical considerations on the part of the issuer, including what disclosure matters to focus on in such periodic reports. For the 2025 reporting season, climate change, cybersecurity, AI and geopolitical tensions are some of the key issues and trends that issuers should consider when preparing their annual reports.

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