

Client Alert

August 2018

SEC Adopts Amendments to Regulation S-K and Regulation S-X to Simplify Disclosure Requirements

The Securities and Exchange Commission (SEC), on August 17, 2018, voted to adopt amendments to various public company disclosure requirements it believes are redundant, duplicative, overlapping, outdated or superseded. On balance, the amendments are more technical in nature than revolutionary, but they will nonetheless require reporting companies to revise and update a number of routine disclosures appearing in periodic reports and registration statements. The final amendments become effective 30 days after publication in the Federal Register.

The following discussion provides a high-level summary of the more notable changes to the existing rules. The full slate of amendments are described in greater detail in the SEC's [adopting release](#). In addition to the adopting release, the SEC issued a helpful "[demonstration version](#)" of the amendments, which provides a blackline of the final changes against existing regulations.

Changes to the Business Section

- **Removal of requirement to disclose segment financial information.** Item 101(b) of Regulation S-K, which required disclosure of financial information by business segment for the periods reported, has been deleted. In lieu of requiring duplicative disclosure, the rule explicitly allowed companies to include a cross-reference to this information in the notes to the financial statements or, conversely, to include a cross-reference to this information in the business section. This change eliminates the possibility for redundant disclosure.
- **Removal of requirement to disclose amount spent on research and development (R&D) activities.** Based on the SEC's observation that US GAAP requires similar disclosure, the amendments delete Items 101(c)(1)(xi) and 101(h)(4)(x) of Regulation S-K, which required the estimated amount spent on company-sponsored R&D activities during each of the years presented. Item 303 of Regulation S-K will continue to require the disclosure of any material trends related to R&D in the MD&A.
- **Removal of requirement to disclose financial information by geographic area.** Items 101(d)(1) and (d)(2) of Regulation S-K, which required disclosure of financial information by geographic region, have been deleted. Similar to segment reporting, the rule explicitly allowed companies to include a cross-reference to this information in the notes to the financial statements in lieu of providing duplicative information in the financial statements. As a result of this deletion, Item 101(d)(4) of Regulation S-K, which required a discussion of any facts that indicate the geographic financial information may not be indicative of current or future operations, has also been deleted.
- **Removal of requirement to disclose any risks related to, and dependence on, foreign operations.** The amendments delete Item 101(d)(3) of Regulation S-K, which required disclosure of any risks associated with foreign operations and segment dependence on foreign operations. The SEC noted that companies are expected to include a discussion of such risks in the risk

factors section pursuant to Item 503(c) of Regulation S-K. In addition, Item 303(a) of Regulation S-K requires a discussion of known trends and uncertainties in the MD&A.

Changes to Disclosure Related to Description of Common Equity

- **Removal of requirement to disclose high and low trading prices.** Because stock price information is readily available to investors, the amendments delete Item 201(a)(1)(ii) of Regulation S-K, which required disclosure of the high and low sales prices for common equity listed on a US exchange for each quarterly period for the past two years.
- **Removal of requirement to disclose frequency and amount of cash dividends.** The amendments delete Item 201(c)(1) of Regulation S-K, which required disclosure of the frequency and amount of cash dividends declared by a company and any restrictions that may materially limit a company's ability to pay dividends. In its place, Rule 3-04 of Regulation S-X has been amended to require disclosure of the amount of dividends in interim periods. The SEC noted that the frequency of such dividends will be apparent based on the amended disclosure required under Rule 3-04. The SEC also noted that there are a number of other rules that require disclosure of restrictions on the payment of dividends (e.g., amended Rule 4-08(d)(3) of Regulation S-X).

Changes to the MD&A

- **Specifying that "geographic areas" are to be discussed, if material.** As a result of the deletion of the requirement to disclose financial results by geographic area in the business section, the SEC added qualifiers in Item 303(a) of Regulation S-K to make clear that a discussion of geographic areas should be included when companies determine such information would be appropriate to an understanding of the business.
- **Removal of requirement to discuss seasonality in interim reports.** The amendments delete Instruction 5 to Item 303(b) of Regulation S-K, which required a discussion of any material seasonal aspects of a company's business. The SEC believes that the similar requirements under US GAAP and the remainder of the disclosure requirements in Item 303 of Regulation S-K convey reasonably similar information.

Other Changes

- **Removal of requirement to provide the ratio of earnings to fixed charges in connection with debt securities.** The amendments delete Items 503(d) and 601(b)(12) of Regulation S-K entirely, which means that companies are no longer required to disclose the historical and pro forma ratios of earnings to fixed charges or provide as an exhibit the computation of any ratio of earnings to fixed charges. The SEC noted that the variety of analytical tools available to investors today accomplishes a similar objective as the ratio of earnings to fixed charges, thereby rendering it unnecessary.
- **Removal of requirement to disclose in interim reports material events subsequent to the end of the fiscal year.** The amendments delete Rules 8-03(b)(2) and 10-01(a)(5) of Regulation S-X, which required disclosure in interim financial statements of material subsequent events and contingencies subsequent to the end of the most recent fiscal year. Such disclosure encompassed significant changes in accounting principles and practices, estimates inherent in the preparation of the financial statements and the status of long-term contracts. The SEC believes such disclosures are appropriately covered by US GAAP and Item 303(b) of Regulation S-K.
- **Removal of Public Reference Room address.** The amendments delete the requirement in Item 101 of Regulation S-K and the instructions to various registration statement forms to identify the

SEC's Public Reference Room and disclose its physical address and phone number. The SEC retained the requirement to disclose the SEC's internet address and a statement that electronic filings are available there. The SEC also added a requirement to Item 101 and various registration statements requiring issuers to disclose their internet addresses. In the past, such disclosure has been a voluntary—albeit common—practice.

- **Additional revisions to accounting rules.** The SEC also identified a large number of accounting requirements, predominantly in Regulation S-X, that substantially duplicate GAAP or IFRS requirements, or that are otherwise redundant. Many of these requirements have therefore been eliminated or consolidated with other rules. The SEC's adopting release contains various charts that attempt to describe the technical changes to these and other rules and also note where a number of potential changes have been referred to the Financial Accounting Standards Board for further review.

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