

July 21, 2016

SEC Proposes Updates to Rationalize Disclosure Requirements

On July 13, 2016, the Securities and Exchange Commission (the “SEC”) proposed amendments to certain of its disclosure requirements that may have become redundant, duplicative, overlapping, outdated or superseded, in light of other SEC disclosure requirements, U.S. Generally Accepted Accounting Principles (“U.S. GAAP”), International Financial Reporting Standards (“IFRS”) or changes in the information environment. The SEC also solicited comment on certain disclosure requirements that overlap with, but require information incremental to, U.S. GAAP to determine whether to retain, modify, eliminate, or refer them to the Financial Accounting Standards Board (“FASB”) for potential incorporation into U.S. GAAP.

The proposed amendments are an attempt to streamline the SEC’s disclosure requirements and do not significantly alter the total mix of information currently provided to investors or otherwise implement the substantive revisions to Regulation S-K discussed in the SEC’s April 2016 concept release, “*Report on Review of Disclosure Requirements in Regulation S-K*.” These proposals are a result of the SEC’s Disclosure Effectiveness Initiative, a comprehensive evaluation of the SEC’s disclosure requirements with the objective of improving the disclosure regime for both investors and companies. The proposed amendments also implement a requirement under the Fixing America’s Surface Transportation Act (the “FAST Act”) that the SEC eliminate provisions of Regulation S-K that are duplicative, overlapping, outdated, or unnecessary.

In the proposing release, the SEC notes that in several cases, the streamlining of disclosure requirements would result in the relocation of disclosures within a filing—often from the non-financial portion of the filing to the financial statements—potentially changing the prominence or context of both the relocated disclosures and the remaining disclosures. The SEC also notes that certain proposed amendments would replace certain existing rules that have bright line disclosure thresholds with rules that do not, potentially changing the disclosure provided to investors.

Significantly, disclosure moved into the financial statements would be subject to an annual audit or interim review by the issuer’s auditors and to internal control over financial reporting. Such a move would also result in such disclosure no longer benefiting from the protections of the Private Securities Litigation Reform Act for forward-looking statements, which may cause issuers to be less likely to voluntarily supplement those disclosures with forward-looking information as compared with disclosures made outside the audited financial statements.

Proposed Amendments

The proposed amendments address a variety of disclosure requirements under Regulation S-K and Regulation S-X.

Redundant or Duplicative Requirements

A number of the proposed amendments would delete requirements contained in Regulation S-K or Regulation S-X that duplicate requirements under U.S. GAAP or IFRS. Examples include certain disclosure requirements regarding foreign currency, consolidation, income tax reconciliation, warrants, rights and convertible instruments, related party transactions, contingencies, earnings per share and interim financial statements, among others.

Overlapping Requirements

Several of the proposed amendments would delete or integrate overlapping disclosure requirements, which are related to, but not the same as, U.S. GAAP, IFRS or other disclosure requirements.

Proposed Deletions. The SEC is proposing to delete a number of requirements that provide for disclosures that convey reasonably similar information to or are encompassed by the disclosures that result from compliance with the overlapping U.S. GAAP, IFRS or SEC rules, or provide for disclosure incremental to the overlapping U.S. GAAP, IFRS or SEC disclosure requirements that may no longer be useful to investors.

The proposed deletions include disclosures about repurchase and reverse repurchase agreements, certain pro forma information in interim financial statements and business section disclosure in respect of segments, geographic areas, seasonality and dividends, which are already required to be disclosed in a substantially similar form in the MD&A or the financial statements. In addition, the proposed rules would eliminate the table currently required in Form 10-K (or incorporated by reference from the proxy statement) for existing equity compensation plans with equity securities authorized for issuance in view of similar disclosures required in the financial statements under U.S. GAAP.

The SEC is also proposing to remove the requirements for issuers of registered debt securities to disclose the ratio of earnings to fixed charges and for issuers of registered preferred equity securities to disclose the ratio of dividends to earnings. As noted in the release, many of the components of these ratios are already included in the financial statements, and there are a variety of analytical tools available to investors that accomplish a similar objective as the ratio of earnings to fixed charges.

Proposed Disclosure Integration. In other instances, the SEC is proposing to integrate disclosure requirements that overlap with, but require information incremental to, other disclosure requirements. Proposed topics for integration include disclosure requirements regarding foreign currency restrictions, restrictions on the payment of dividends, and performance by geographic area.

Solicitation of Comments on Disclosure Requirements. The SEC is also soliciting comment on certain disclosure requirements that overlap with, but require information incremental to, U.S. GAAP to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. These include disclosures regarding major customers, in respect of which the Regulation S-K disclosure requirements are more expansive than those under U.S. GAAP. The SEC is also soliciting comment regarding disclosures describing legal proceedings, where incorporation of Regulation S-K's requirements into U.S. GAAP would result in the addition of disclosure of the possible range of loss, subject the disclosure to audit, internal control over financial reporting, and XBRL tagging requirements, and require the increased disclosure of factual information regarding disclosed legal proceedings.

Outdated and Superseded Requirements

In the proposing release, the SEC notes that it has preliminarily identified outdated requirements that have become obsolete as a result of the passage of time or changes in the regulatory, business, or technological environment. These include references to the availability of company filings at the Commission's Public Reference Room, detailed disclosure requirements of sale or bid prices for most issuers whose common equity is traded in an established public trading market, and, in the case of foreign private issuers, the disclosure of exchange rate data where the financial statements required to be provided in the Form 20-F are prepared in a currency other than the U.S. dollar. The SEC is also proposing to amend Form 20-F (the provisions of which are incorporated into the Form F-1 requirements) to provide that foreign private issuers not be required to seek a waiver from the SEC in instances where the audited financial statements for an initial public offering are more than 12 but less than 15 months old.

The proposing release also contains a number of proposed disclosure amendments addressing superseded requirements, which are technical corrections intended to address recent legislation, more recently updated SEC disclosure requirements or more recently updated U.S. GAAP requirements.

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Comments on the proposed rules are due 60 days after their publication in the Federal Register. For a copy of the proposed rules, see: <https://www.sec.gov/rules/proposed/2016/33-10110.pdf>.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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